

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT

JENNIFER A. CONNORS

V

DARTMOUTH MEDICAL SCHOOL,
et al.

*
*
*
*
*

* CIVIL FILE NO. 10-94

JURY TRIAL

Monday, March 31, 2014
Burlington, Vermont

BEFORE:

THE HONORABLE WILLIAM K. SESSIONS III
District Judge

APPEARANCES:

NORMAN E. WATTS, JR., Watts Law Firm, P.C.,
19 Central Street, Woodstock, Vermont; Attorney
for the Plaintiff

EDWARD M. KAPLAN, ESQ. and WILLIAM D. PANDOLPH,
ESQ., Sulloway & Hollis, PLLC, 9 Capital Street,
Concord, New Hampshire; Attorneys for the
Defendants

ANNE NICHOLS PIERCE
Registered Professional Reporter
United States District Court
Post Office Box 5633
Burlington, Vermont 05402

I N D E X**E X A M I N A T I O N**

WITNESS NAME	PAGE	LINE
JENNIFER CONNORS, M.D.		
Direct by Mr. Watts	5	7
Cross by Mr. Kaplan	18	5
Redirect by Mr. Watts	27	15
MICHAEL SATEIA, M.D.		
(Note: Italicization of record indicates testimony of Dr. Sateia from his deposition read into the record.)		
Direct by Mr. Watts	34	6
Cross by Mr. Kaplan	45	16

E X H I B I T S

PLAINTIFF'S	DESCRIPTION	IN EVIDENCE
123	2013 1099 tax form	16

M I S C E L L A N E O U S

	PAGE
Plaintiff rests	51
Defendants' motion for judgment as a matter of law	52
Court's ruling on defendant's motion	94

1 MONDAY, MARCH 31, 2014

2 (The following was held in open court without the jury
3 present at 9:05 a.m.)

4 COURTROOM DEPUTY: This is case number 10-94,
5 Jennifer Connors versus Dartmouth-Hitchcock Medical
6 Center, et al. Present in the courtroom on behalf of
7 the plaintiff is attorney Norman Watts. Also present on
8 behalf of defendants are attorneys Edward Kaplan and
9 William Pandolph.

10 The matter before the Court is trial by jury day
11 four.

12 THE COURT: All right. This is the fourth day
13 of trial. The plaintiff had filed a motion to recall
14 Dr. Connors, submitted in writing. I read that motion,
15 read the response from the defendant, and also the
16 reply.

17 This is an effort to briefly call back Dr. Connors
18 to testify about compensatory damages. It is highly
19 discretionary at this point. I appreciate the fact that
20 Dr. Connors had a lengthy opportunity to testify about
21 compensatory damage; did not. It is discretionary at
22 this point. And I am going to permit Dr. Connors to
23 testify briefly in regard to compensatory damages.

24 That's the full extent of the testimony that you
25 seek to introduce; is that correct?

1 MR. WATTS: Yes, sir.

2 THE COURT: Okay.

3 MR. WATTS: Thank you.

4 THE COURT: All right. I appreciate that it's
5 a discretionary call, and I am going to permit the
6 plaintiff to be recalled. So I think with that, we are
7 ready to proceed, are we not?

8 MR. WATTS: Yes.

9 MR. KAPLAN: I believe.

10 THE COURT: All right. Do you want to call
11 the jury in.

12 (The following was held in open court with the jury
13 present at 9:09 a.m.)

14 THE COURT: Good morning. Just want to remind
15 you that you are still under oath. Has anyone spoken to
16 you about the case or have you learned anything about
17 this case from outside the courtroom?

18 (The jury all indicate in the negative.)

19 THE COURT: And no one has conducted any
20 investigations either on the internet or anything with
21 regards to the facts of the case?

22 (The jury all indicate in the negative.)

23 THE COURT: Okay.

24 All right. Mr. Watts, do you want to proceed?

25 MR. WATTS: Yes. Thank you, your Honor.

1 I call Jennifer Connors.

2 JENNIFER CONNORS, M.D.,

3 having been duly sworn by the courtroom deputy,
4 was further examined and testified as follows:

5 THE COURT: Good morning, Dr. Connors.

6 THE WITNESS: Good morning, sir.

7 DIRECT EXAMINATION

8 BY MR. WATTS:

9 Q Good morning, Dr. Connors.

10 A Good morning.

11 Q Dr. Connors, what are you asking this jury for?

12 A I am asking you for the compensation for the losses
13 that I had while -- due to my treatment from
14 Dartmouth-Hitchcock Medical Center.

15 Q The losses in connection with the facts that you
16 have testified to today?

17 A That's correct.

18 Q Would you give the jury an idea, specific idea of
19 what those losses are, please?

20 A Yes. There's two elements to the losses, as I see
21 them: One related to being precluded from doing
22 moonlighting activities or moonlighting work and the
23 other for the delay in starting my practice as a
24 psychiatrist.

25 Q You mentioned moonlighting. Would you describe

1 what moonlighting is and when it might have occurred,
2 please?

3 A Sure. Moonlighting is taking on extra paid work as
4 a physician while one is a resident enrolled in a
5 training program. So it requires a full state licensure
6 as well as permission from the program director to do
7 that.

8 Q And I think you mentioned a moment ago you were not
9 permitted to moonlight. Why not?

10 A I wasn't -- I wasn't supported. In fact, I was --
11 Dr. Green, my program director, didn't sign off on my
12 licensure applications to the state of Vermont. I had a
13 Utah license when I started in the Dartmouth program,
14 but I needed a state license to practice, because
15 moonlighting requires independent practice as a doctor.

16 Q What request did you express, if any, to Dr. Green
17 for that licensure documentation?

18 A I requested a number of different times through my
19 years at Dartmouth, but the first time I remember doing
20 so in writing was in June or July of 2007.

21 Q Okay. So would you please give the jury insight
22 into what your losses were when you were precluded from
23 moonlighting.

24 A Sure. Typically the moonlighting activity that a
25 resident would do would be at New Hampshire Hospital.

1 It's a weekend type of stint or duty, and income that
2 one is paid is around \$1500. So I would -- based on my
3 pattern of moonlighting in Utah and my schedule at
4 Dartmouth, I would reasonably have moonlighted about
5 once a month at New Hampshire Hospital.

6 Q Once a month for what period of time?

7 A That would be from the -- from June of 2007 through
8 to, I think -- well, through the end of my -- of my
9 training there, which would have been 2000 and -- well,
10 9, if I had graduated. But because it was a delay, it
11 was through to 2010 when --

12 Q What is your understanding of what residents earn
13 during that moonlighting on the weekends?

14 A About \$1500 for the weekend per -- per weekend.

15 Q So what do you figure the total of your losses in
16 that regard are?

17 A About \$55,000.

18 Q And did you moonlight when you -- after you
19 transferred to the University of Vermont, did you have
20 moonlighting experiences there?

21 A I did. I -- I had a full medical license in
22 joining that program, and I worked at Vermont State
23 Hospital in that capacity moonlighting.

24 Q What did you earn during that period of time?

25 A Just short of \$5,000. Because of the -- because of

1 their requirements, I had to first rotate through
2 Vermont State Hospital before I could moonlight there
3 and then be welcome as a -- be admitted with
4 credentialling. And so all of that happened in the
5 spring of 2011.

6 So I worked there as soon as I could in terms of
7 moonlighting and had a \$5,000 contract, which I worked
8 through all of that. So just shy of 5,000.

9 Q So please describe your loss, net losses that you
10 have computed with regard to those dollars you have just
11 identified.

12 A If you -- if you take the \$5,000 that I was able to
13 make in -- for moonlighting and subtract it from the
14 55,000, when -- it comes down to \$50,000 losses.

15 Q And you mentioned a second category of losses.
16 Please describe.

17 A The second category related to the delay in terms
18 of starting practice as a general psychiatrist or as a
19 psychiatrist.

20 Q What was the delay?

21 A The delay was due to excessive -- essentially from
22 being barred for the six-month period of time between
23 the beginning of March 2007 through till September and
24 the period of nonrenewal that summer; and then the delay
25 in -- or the refusal to -- to go from PGY-3 year to

1 PGY-4 year in January of -- the beginning of January of
2 2009; and then there was a six-month period of time
3 there that -- until the conclusion of the fair hearing,
4 and then I had to apply for new residency that whole --
5 which takes an entire year. So I wasn't able --

6 And then during that time, there was a year period
7 in delay in terms of Dartmouth and Dr. Green, my program
8 director, again, signing off on his responsibilities
9 towards my medical licensure.

10 I got my medical licensure in June of 2010, just a
11 few days before entrance into the program here at UVM to
12 finish my year, my PGY-4 year. That took a year
13 obviously to finish up. And then I was able to practice
14 as a general psychiatrist. And I otherwise would have
15 graduated from the Dartmouth program as a general
16 psychiatrist and entered practice in 2009. So a
17 couple-year delay.

18 Q Okay. Please describe the earnings that you had
19 during the period of time once you started practicing in
20 2011, please.

21 MR. KAPLAN: Your Honor, I am going to object
22 to this, and I think it would be best if we approach and
23 explain why.

24 THE COURT: Right. I think you should
25 approach the bench.

1 (The following was held at the bench.)

2 MR. KAPLAN: Your Honor, the reason I am
3 objecting, and I didn't want to do it in open court, is
4 this is one of the issues that you considered in
5 connection with the expert and rejected this testimony.
6 So I object to it.

7 THE COURT: It's totally speculative.

8 MR. KAPLAN: And I object to it, and I just
9 want to -- I felt it best to approach.

10 MR. WATTS: She is going to be speaking about
11 her actual losses, not about future losses.

12 THE COURT: What is she going to say about her
13 actual losses?

14 MR. WATTS: She is going to say she earned X,
15 Y and Z once she started practicing, and she could have
16 started practicing two years earlier and would have had
17 that income.

18 THE COURT: That's totally speculative.

19 MR. KAPLAN: Thank you, your Honor.

20 THE COURT: And that's totally speculative.
21 That's essentially what I relied upon in excluding the
22 testimony of the expert.

23 I appreciate the fact that after she graduates from
24 UVM she gets a particular placement, but who is to say
25 what placement she would have gotten two years before

1 that. That's the difficulty that you have, frankly, in
2 compensatory damages.

3 MR. KAPLAN: The issue also is there was
4 moonlighting, but we did let that in. We debated.

5 MR. WATTS: Well, I mean, she -- she can
6 testify about her various job applications and how she
7 was -- you know, she was -- started working with the
8 Vermont State Hospital while she was at UVM. So there
9 wasn't a period of time that was delayed, and there
10 wasn't really any uncertainty about it, because she has
11 already been moonlighting there. And --

12 THE COURT: But we are not talking about
13 moonlighting. We are talking about compensatory
14 damages --

15 MR. KAPLAN: Correct.

16 THE COURT: -- for lost income, and what you
17 are suggesting is she takes her first year of
18 moonlighting after becoming a psychiatrist and then
19 essentially backdate that to give her an estimate of
20 what she would have earned two years ago, and there's
21 really not foundation for that.

22 MR. WATTS: Well, that's what I am trying to
23 edge into here, is that she was already working at
24 Vermont State Hospital, and that's what -- she just
25 continued right on working at Vermont State Hospital.

1 And the same is true as she continued in the job market
2 working at HCRS.

3 They -- it's virtually an automatic job entry, and
4 so it wouldn't be speculative in a sense that she has to
5 search for a job, you know, being different jobs.

6 THE COURT: But after she left UVM, she didn't
7 go to New Hampshire Hospital. She may have gone to New
8 Hampshire Hospital in the meantime, on an interim basis,
9 but I didn't think that she went to New Hampshire
10 Hospital. Did she?

11 MR. WATTS: No, Vermont State Hospital.
12 That's where she --

13 THE COURT: She went to Vermont State
14 Hospital.

15 MR. WATTS: She had been moonlighting there
16 and she just continued.

17 THE COURT: But I thought you said New
18 Hampshire.

19 MR. WATTS: If I did, I'm sorry.

20 MR. KAPLAN: She -- the moonlighting she was
21 talking about, New Hampshire Hospital, your Honor.

22 THE COURT: Right. He just said she went --
23 while going to UVM, was working at New Hampshire
24 Hospital.

25 MR. KAPLAN: I missed it if he said that.

1 THE COURT: That's literally what he said,
2 actually. So now it's Vermont State Hospital.

3 MR. WATTS: Yes.

4 THE COURT: What does that mean?

5 MR. WATTS: She moonlighted at Vermont State
6 Hospital, and she just continued at Vermont State
7 Hospital, and so there was no period of time when she
8 had to search for a job or any speculation about her
9 future income or what she -- what she was going to
10 pursue. So the idea that it's speculative, it seems to
11 me, is drastically reduced because she just continued on
12 working for Vermont State Hospital.

13 MR. KAPLAN: The problem, from our position,
14 your Honor, is that when she was moonlighting --
15 moonlighting is different than working in -- what they
16 are trying to do, no matter how they color it, is take
17 what she earned that next year, however they got it, and
18 attribute it to the prior year. And that's what we
19 objected to in connection with the expert, that's what
20 you ruled on, and that's what they are trying to get
21 back in.

22 THE COURT: I mean, I agree with that. So I
23 am going to sustain the objection.

24 MR. KAPLAN: Thank you, your Honor.

25 THE COURT: Okay.

1 (The following was held in open court.)

2 BY MR. WATTS:

3 Q Jennifer, Dr. Connors, would you please describe
4 the specific -- specifically the periods of time when
5 you worked at Vermont State Hospital?

6 A Yes. I was there in my capacity as a resident for
7 Fletcher Allen Healthcare and UVM in November and
8 December, so a month-long period, or a month-long block
9 in 2010. And then received admitting privileges for --
10 as a staff psychiatrist for the purpose of moonlighting
11 in March of 2000 -- 2011. I then worked calls during
12 the weekend and calls overnight and was paid under a
13 contract with the state of Vermont during the spring
14 through to the July 1st of 2011, and that contract was
15 for \$5,000.

16 There was a gap of time of maybe about a month, and
17 then I was rehired by Vermont State Hospital in a
18 similar capacity, after my graduation from my residency
19 program at UVM, and worked there under a number of
20 different contracts through to the closure of Vermont
21 State Hospital due to the flood in 2012.

22 So about a -- no, no, I'm sorry. Several months
23 later. So -- and then for a year after that working
24 actually as the only psychiatrist for Vermont State
25 Hospital for some displaced patients who we treated out

1 of the -- a unit out of a prison down in the southern
2 part of the state. So I was a psychiatrist for that *ad*
3 *hoc* hospital there for about a year.

4 Q And then what -- what did you do after that
5 professionally?

6 A Well, during that time I also worked for HCRS,
7 which is a community-based mental health system for
8 folks with serious and persistent mental illness, at
9 first on a contract basis and then as a salaried
10 psychiatrist.

11 Q And what about after that?

12 A Pardon?

13 Q What about after that?

14 A That pretty much brings us to today.

15 Q Okay. And so that's what you are currently
16 pursuing, true?

17 A That's what I am currently doing, yes.

18 Q Okay. I am going to show you a document that has
19 been marked as Exhibit No. 123, and if you can identify
20 it?

21 A Yes.

22 Q What is it?

23 A It's a 2013 1099 tax form.

24 Q And is it yours?

25 A Yes.

1 Q And it's the form that was the basis for your
2 filing for your taxes?

3 A Yes, that we would be using this year, yes.

4 MR. WATTS: I move the admission.

5 THE COURT: This is the 2013 --

6 MR. WATTS: Yes.

7 THE COURT: -- W-2?

8 MR. WATTS: Yes, sir.

9 THE COURT: Okay.

10 MR. KAPLAN: No objection.

11 THE COURT: So admitted.

12 MR. KAPLAN: It's not a W-2, however,
13 your Honor. We're looking at both the -- I don't know
14 if Mr. Watts intended this. It's a W-2 and I believe a
15 1099 as well, but --

16 MR. WATTS: Right. It does include the 1099
17 also. Sorry.

18 THE COURT: All right. It is admitted.

19 THE WITNESS: I didn't look at the second
20 page.

21 (Plaintiff's Exhibit 123 was received in
22 evidence.)

23 BY MR. WATTS:

24 Q And we have in evidence Exhibit No. D-1. Would you
25 please just describe that to the jury?

1 A It's a tax return, 2012, 1040.

2 Q Is there anything else attached to that document?

3 A There's a number of different pages. Attached to
4 it is a 1099 for 2012 from the state of Vermont as well
5 as a 1099 from 2012 for HCRS.

6 Q Okay. And these are your tax returns?

7 A Yes.

8 Q This is for 2012?

9 A Correct.

10 Q And you are aware that Exhibit No. D-12 is your
11 earnings tax return for 2011; is that true?

12 You want me to show it to you?

13 A (Witness nods head.)

14 Sorry. Yes.

15 So D-12, yeah, 2011, same thing, 1040 and --

16 Q So that's your tax return package that you filed in
17 2011?

18 A Correct.

19 Q Okay. And similarly, we have in evidence the 2010
20 tax returns that you submitted to us and we gave to the
21 defense. True?

22 A True.

23 Q And that's Exhibit No. D-11.

24 A Okay.

25 Q Okay.

1 MR. WATTS: Thank you, your Honor.

2 THE COURT: Okay. All right. Any cross
3 examination?

4 MR. KAPLAN: Thank you, your Honor.

5 CROSS EXAMINATION

6 BY MR. KAPLAN:

7 Q Dr. Connors, in terms of the testimony you just
8 gave, I just have a few things I want to clarify.

9 You continued to refer to the period of your
10 suspension as the period you were banned. You just said
11 that again; is that correct?

12 A Yes.

13 Q Okay. You were here, by the way, when your own
14 expert, Dr. Beck, said that was a reasonable reaction to
15 your behaviors at the time, weren't you?

16 MR. WATTS: Objection. Facts not in evidence.

17 THE COURT: Objection overruled.

18 You can answer that.

19 MR. KAPLAN: Thank you.

20 THE WITNESS: I'm sorry. What was the
21 question?

22 BY MR. KAPLAN:

23 Q My question was, you were here when your own
24 expert, Dr. Beck, took the stand and testified that, in
25 his view, he could not challenge the decision of those

1 who put you on suspension for the actions that occurred.

2 Do you remember that testimony, ma'am?

3 A I don't remember the testimony, actually.

4 Q We'll move on.

5 I want to make sure of a couple of things.

6 During -- you started at the medical center in June of
7 2006, and you ended at the medical center around April
8 of 2009, correct?

9 A Um, well, I guess -- it depends on what capacity
10 you are actually asking the question.

11 Q How about when you showed up and when you left.
12 You started in June of 2006. Can we agree to that?

13 A Yes.

14 Q And you last worked there sometime around April of
15 2009, I believe that's what you said in your testimony,
16 when you finished up the piece after the nonrenewal. Do
17 you remember that?

18 A The -- my last clinical day was April 10th. I
19 moved out of my office the 12th.

20 Q I will go with April 10th. So basically -- you
21 were there, basically, from June to April, 2006 to 2009.
22 Correct?

23 A I was -- still had the capacity as a resident until
24 August 1st, 2009.

25 Q Okay. And that was one of my points. So you --

1 you had a residency contract that carried you through,
2 and I just want to ask if you can agree that you were
3 paid for three full years on residency contracts at the
4 medical center?

5 A I don't know if -- I don't know if I could agree to
6 that.

7 Q Well, did you have a residency contract from June
8 of 2006 to around June or July of 2007? I mean, I can
9 mark all these and we can talk about it.

10 A Right. I --

11 Q Don't you know you had a residency contract then?

12 A Could you repeat your question, please, Mr. Kaplan.

13 Q Sure.

14 Aren't you aware of the fact that you entered and
15 had a resident's contract from June, roughly, 2006, to
16 roughly the end of June 2007?

17 A Yes, that's true.

18 Q And do you recall that you got paid fully for that
19 particular year? Correct?

20 A Yes. Based on the contract, yes.

21 Q And you got paid fully whether you were on
22 suspension or whether you were on leave or whether you
23 were working. Every payment under that contract was
24 paid to you. Correct, ma'am?

25 A Yes.

1 Q Okay. And then you entered into another residency
2 contract in September of 2007. I think it was actually
3 September 17th when you ultimately came to agreement on
4 your remediation program? Do you remember that?

5 A That's -- that's not when the agreement was, but
6 what's the question related to the contract? I'm sorry.

7 Q My question is, you had a contract for another
8 yearlong period of time and got paid fully for that
9 particular contract, didn't you?

10 A So the second contract was not a yearlong contract.
11 So, no.

12 Q Did you get -- did you miss any pay while you were
13 at the medical center from the time you began until the
14 end of 2000 -- until June of 2009? Three years, ma'am.

15 A Right. So -- so when -- the time -- so I, frankly,
16 am -- it's not an easy question, Mr. Kaplan. So --
17 because the contract was nonrenewed in the summer of
18 2007, and then, so --

19 Q Let's forget the contract.

20 A Oh.

21 Q I will try it a different way. From the time you
22 began until June of 2009, all right, from the time you
23 began until June of 2009, did the medical center fail to
24 pay you your salary at any time?

25 A So I was paid until -- I don't know, because I was

1 paid for one -- until August 1st for one. So I had pay
2 and benefits all the way through the fair hearing
3 process till the decision made, and then --

4 Q What you just said, doesn't that lead you to
5 conclude, ma'am, that from June of 2006 until the end of
6 your fair hearing process, you received your pay whether
7 you were working or not working at the medical center?

8 A I was paid, but the -- but the accuracy to the
9 amount that I was paid and periods of time were -- my
10 status was uncertain or my -- my PG year may have been
11 extended provides confusion in terms of whether I would
12 have been paid at a -- at a PG-2 level or PGY-3 level or
13 what have you.

14 So I can't concretely answer your question yes or
15 no, so -- that's an explanation as to why I can't.

16 Q Can you point to a single week between June of 2006
17 and August 1 of 2009, when you did not receive
18 compensation and benefits from the medical center?

19 A No, I can't.

20 Q Thank you.

21 You have been critical of Dr. Green and his -- I
22 think your testimony was, his lack of assistance in
23 securing -- helping you secure a Vermont license. Do
24 you remember that testimony a few moments ago?

25 A Yes, something to that effect.

1 Q When did you actually apply for your Vermont
2 license? When did you physically apply for that
3 license?

4 A For the -- for the license that I was provided in
5 June of 2010, the application process, I started
6 applying in October, November 2009.

7 Q You sure it was that early?

8 A I'm pretty sure it was that early.

9 MR. KAPLAN: Bill, could you bring up Exhibit
10 D-1, D477.

11 MR. PANDOLPH: Say that again.

12 MR. KAPLAN: D477. I think it's the first
13 page, actually. That's it.

14 Can you highlight the part about the picture, that
15 whole -- just that part. Yeah, from about there. Thank
16 you.

17 BY MR. KAPLAN:

18 Q Dr. Connors, this is your application for your
19 residence -- excuse me, for your license, and actually,
20 although it is dated 7 the 17th, the applicant's --
21 didn't you actually file this on November --

22 Didn't you actually file this application in
23 November of 2009? Actually, I think it's --

24 MR. KAPLAN: The exhibit number is D-1.

25 BY MR. KAPLAN:

1 Q Dr. Connors, I know you prefer having documents
2 handed, so let me do it that way.

3 A Appreciate it.

4 Q Is that your application for your Vermont license,
5 ma'am?

6 A This --

7 Q The redacted material is your personal information
8 which we took out.

9 A Um, this may be part of it, but it's not all of it.

10 Q Okay. On the front of it there's a stamp
11 indicating when it was received. Do you see that stamp
12 and the date on it?

13 A Yes, I see the stamp. It's not -- the copy's
14 difficult, so I don't know where it's received from
15 or -- actually, I can't even make out received, but I
16 see the date.

17 Q And what is the date on it, ma'am?

18 A Actually, there's two dates on this document as
19 well.

20 Q What's the date in the box that I just asked you
21 about?

22 A The date in the box is December 17, 2009.

23 Q Thank you. Can I have it?

24 Now, regardless of when you applied for your
25 license, this license wouldn't permit you to work at New

1 Hampshire Hospital, would it?

2 A Well, I would have to see the document again
3 because, like I say, that wasn't a complete document.
4 So the document actually could have been part of the New
5 Hampshire medical license application.

6 Q It could have been part of anything, ma'am, but it
7 is an application for Vermont. City: Windsor; state:
8 Vermont. This was your Vermont physician's license
9 application, wasn't it?

10 A It may have been part of my application to this --
11 to the medical board of Vermont, but it -- there's
12 common applications that can be used in different
13 states.

14 Q Did you file a request after your training license
15 in New Hampshire?

16 A No.

17 Q So regardless of whether there might have been
18 something, you never filed for a license in the state of
19 New Hampshire, did you, other than your training
20 license?

21 A No, that's not actually correct.

22 Q Did you file for a license in the state of New
23 Hampshire? A medical license to practice medicine.

24 A At some point in time, I believe in the summer of
25 2007 into the fall of 2007, and maybe other times, I was

1 in the process of applying for both Vermont and New
2 Hampshire, and at my -- end of my -- at the time that I
3 was leaving, you know, my clinical duties in 2009, I was
4 seeking that same letters of reference from my program
5 director for New Hampshire as I was in the fall of 2009.

6 Q Did you file a license application in the state of
7 New Hampshire to practice medicine in New Hampshire?

8 A At some point in those years, I believe I did.

9 Q Okay. Do you have a copy of that anywhere, that
10 you know of?

11 A In my records.

12 Q Okay. So you think you filed in New Hampshire?

13 A Yes. There's some -- there's common applications.
14 There's a number of different clearinghouses where
15 applications for licensure goes through. Some of --
16 some states use 'em, some states don't use 'em, but you
17 have to go through those --

18 Q Okay.

19 MR. KAPLAN: You can take that down, Bill.

20 Bill, you can take that exhibit down.

21 MR. PANDOLPH: I did.

22 MR. KAPLAN: Oh, thank you.

23 BY MR. KAPLAN:

24 Q You are -- if I understand an exhibit shown to you
25 by counsel -- and I won't be much longer -- in 2013, you

1 earned a total of about \$240,000, correct?

2 A I believe -- yes.

3 Q Okay. In 2012, you earned about 140,000, correct?

4 A You'd have to show it to me.

5 Q You don't recall that, having just gone over it
6 with counsel? Your own.

7 Do you remember what you earned approximately in
8 2012 without actually looking at the document?

9 A I'd have to look at the document, sir.

10 MR. KAPLAN: Your Honor, I have nothing
11 further. Thank you.

12 THE COURT: All right. Anything further,
13 Mr. Watts?

14 MR. WATTS: Yes, sir.

15 REDIRECT EXAMINATION

16 BY MR. WATTS:

17 Q Dr. Connors, would you please take a moment and
18 describe the licensing application process that you
19 began when you were a resident at Dartmouth-Hitchcock.

20 A Yes. It started with informing actually the
21 Graduate Medical Education department that I was -- that
22 I had a full license to practice in Utah, practice
23 medicine in Utah, and I had one for about a year and a
24 half before coming to the Dartmouth program, and so I
25 first asked for their assistance in continuing my

1 credentials in -- locally, so the state of Vermont, New
2 Hampshire, because I live right at the border of both
3 states.

4 And the -- so what I was seeking was to be -- was
5 to ensure that I had continued licensure to practice as
6 a physician as well as keep the other credentials
7 involving prescribing medications out- -- outside one's
8 credentials as a resident. So I was seeking to maintain
9 my full credentials, just essentially, but have them
10 not -- have them not -- have the same that I had in Utah
11 in the state of Vermont and New Hampshire.

12 Q So when did you start that process?

13 A So that was in June, July, August 2006 when I first
14 got there.

15 Q And what steps do you go through internally,
16 specifically, in that process?

17 A There -- there -- their process for supporting
18 folks in their applications for licensure wasn't
19 particularly robust, and I was used to it being more
20 robust in Utah, so I essentially then took it upon
21 myself to understand the process in terms of the
22 application procedures, the different clearinghouses
23 that -- or data of repositories you have to go through
24 in terms of applying -- it's slightly different in
25 Vermont than it is in New Hampshire -- and submitting

1 information to those clearinghouses, getting the
2 necessary letters of references and recommendations, and
3 then filling out the state-specific forms that go along
4 with those applications, most of which are electronic,
5 some are paper -- Vermont is actually paper --
6 completing them.

7 And so through that period of time then,
8 specifically very notably in the summer of 2007, I
9 sought the same from Dr. Green as well as Dr. Nordby,
10 who was a faculty person; Dr. West. Each -- each
11 licensure application requires either a reference and
12 completion of a certain portion of the application by
13 either a chief of staff, if one is an
14 independently-practicing attending physician or, in the
15 case of a person just coming out of training or involved
16 in a training program, then from the training program
17 director him or herself. They are required to sign off
18 on your competencies, your ability to perform, your
19 ethical standing, and your fitness or wellness as a
20 physician.

21 So there's a couple pages in the Vermont
22 application, similarly in New Hampshire, as I remember
23 it, that needs to be completed by the training director,
24 in my case, and so I was denied that in the summer of
25 2007, in that I continued to go back to Dr. Green, as

1 well as in discussions with Graduate Medical Education
2 folks in that process.

3 So I again -- when I was finishing up at New
4 Hampshire Hospital, I asked Dr. Coursin for letters of
5 recommendation as well, talked with Mr. Kelleher, who
6 was administrative director out of Graduate Medical
7 Education to let him know I was pursuing -- and,
8 frankly, to ask him to answer the questions on my part
9 of the application that related to the programs part of
10 the application.

11 I then sought the same from Dr. Green notably in
12 May and June of 2008; was denied actually -- was -- his
13 actual response was to --

14 MR. KAPLAN: Objection, your Honor.

15 A To --

16 THE COURT: Objection. You have an exception
17 to the hearsay rule?

18 MR. WATTS: I'm sorry. I was distracted and I
19 didn't hear what she was saying.

20 THE COURT: Okay. Objection sustained. She
21 was going into comments that were made.

22 MR. WATTS: Oh, yes, of course. Dr. Green.

23 A And then the following time was in late October;
24 October, November of 2008. Then I went back with the
25 forms to Dr. Green, to meet with him; actually,

1 specifically November 20th, 2008; was rejected; and then
2 I continued to seek the same forms, the same letters of
3 recommendation and the same part that he needed to
4 complete, from Dr. Green as well as others, including
5 Dr. Sateia, Dr. West, through -- all the way through
6 until April 10th and then beyond, actually.

7 Ultimately the final responsibilities of the
8 program and Dr. Green were met days before I entered the
9 UVM psychiatry program in 2011.

10 BY MR. WATTS:

11 Q So you testified a moment ago about applying to
12 Vermont in this process you just described. What
13 application, if any, did you make to New Hampshire?

14 A The -- the -- I remember making application or --
15 to New Hampshire in the summer of 2007, and then
16 carrying forward when I was at New Hampshire Hospital.
17 So in that fall time period of 2007 until January.

18 And then after that, my -- my discussions with Dr.
19 Green were slightly more biased on the Vermont side
20 because I was a -- because I had a -- I had gotten a --
21 scholarship money from the University of Vermont to
22 practice in Vermont. So -- but I continued to seek
23 both -- letters of recommendation, and in fact Dr. Green
24 provided me letters that were addressed both to the
25 medical board in Vermont as well as to the medical board

1 in New Hampshire.

2 Q So your final application was only to Vermont, and
3 when did you file that?

4 A It seems to me, as I remember it, it was in the
5 November time frame, 2009.

6 MR. WATTS: Thank you, Dr. Connors.

7 MR. KAPLAN: Nothing further.

8 THE COURT: All right. Thank you, Dr.
9 Connors.

10 (Witness excused.)

11 THE COURT: All right. The plaintiff want to
12 call the next witness?

13 MR. WATTS: The next witness is a reading
14 witness, Dr. Sateia, but we are going -- I think we are
15 going to need a few moments to discuss their objections
16 to some of the reading material that we want to present.

17 THE COURT: I thought you had agreed --

18 MR. KAPLAN: And he agreed to read the first
19 two --

20 THE COURT: The first two sections you had
21 agreed to. There were disputes in regard to others. I
22 thought you had withdrawn that. As a result, those two
23 sections were to be read.

24 MR. KAPLAN: And there is cross examination
25 from mine as well in there -- or an examination of mine

1 as well, your Honor.

2 THE COURT: Okay. Am I incorrect, Mr. Watts?
3 You have some dispute left?

4 MR. WATTS: I guess not. If they're in
5 agreement with what transpired previously, then we don't
6 have a disagreement.

7 THE COURT: Okay. All right. Now, my
8 question is, how do you want to do this? Ordinarily I
9 ask the law clerk to take the witness stand and you ask
10 the questions.

11 MR. WATTS: Yes, that's what I intend to do.
12 She just left the courtroom.

13 THE COURT: Miss Clark, would you like to take
14 the witness stand?

15 MR. KAPLAN: Putting pressure on people.

16 THE COURT: Absolutely.

17 You don't need to be sworn. You just need to
18 read -- do you have a copy of the deposition?

19 LAW CLERK RACHEL CLARK: No.

20 THE COURT: All right. I will introduce Miss
21 Clark as Rachel Clark. She is a resident of Lincoln and
22 graduate of Harvard Law School; is clerking with me this
23 year. Okay.

24 MR. WATTS: So this is the transcript of
25 Dr. Michael Sateia's deposition taken in February -- on

1 February 24, 2011, at the Dartmouth-Hitchcock Medical
2 Center.

3 And if you will proceed to page number five at line
4 eight.

5 Dr. Sateia was sworn in and was under oath for this
6 deposition.

7 And at line eight, I asked Dr. Sateia:

8 BY MR. WATTS:

9 Q I understand that you are acquainted with
10 Jennifer Connors?

11 A I am.

12 Q And that that acquaintance may have begun as
13 early as 2005; is that accurate?

14 A That sounds correct.

15 Q And -- and that you didn't actually treat her
16 as a psychiatric patient?

17 A Correct.

18 Q But rather --

19 A A prescriber of convenience.

20 Q Okay. I am going to show you what has been
21 marked as Exhibit No. 2, which appears to be an
22 e-mail from you to Dr. Green and -- Dr. Ron Green,
23 dated April 13, 2007. I will give you a chance to
24 look at it.

25 A Yes.

1 Q Okay.

2 A I wrote this.

3 Q Do you remember it? I think that's attached
4 to -- I think that's what's attached to a
5 duplicate.

6 MR. KAPLAN: I made a comment but you can go
7 ahead.

8 BY MR. WATTS:

9 Q So Dr. West is the individual who asked you to
10 be the prescriber?

11 A Yes, as an inpatient psychiatrist, and I was
12 asked, I believe, primarily because I do not have
13 regular interaction with the residents, that is,
14 they do not routinely rotate through the service
15 that I direct, and for that reason, you know, I was
16 not likely to have contact with Dr. Connors on any
17 kind of regular basis and, therefore, would
18 minimize any discomfort about the interaction
19 between being a supervising attending physician and
20 a prescribing physician for her.

21 Q My understanding is, though, that you spent
22 some time with her over the course of those years;
23 is that true?

24 A Jennifer would check in, we would have brief
25 discussions, kind of how are things going, and, um,

1 provide her with her prescriptions; and basically I
2 would describe it, as I said here, as a brief
3 supportive context.

4 Q Okay. Apparently you reviewed some neuropsych
5 evals, according to the e-mail?

6 A Right.

7 Q What was the purpose of reviewing the items
8 described in the e-mail?

9 A Just to satisfy myself, you know, that she had
10 been adequately evaluated and diagnosed, and those
11 reports were in front of me, and I satisfied the
12 diagnosis had been well established.

13 Q That is the diagnosis of ADHD?

14 A Correct.

15 Q Any other medical issues besides that
16 diagnosis that you discerned?

17 A Not based on this, no.

18 Q Or that you perceived over time?

19 A No. Well, other than the fact that I think
20 that Dr. Connors was certainly stressed by the
21 issues at hand related to her residency and, um,
22 some of the, um, issues that had been raised by
23 supervising physicians and was being followed by
24 her treating psychiatrist for those issues. But it
25 certainly was clear to me that, you know, that was

1 *some stress there for her, though I, you know, did*
2 *not perceive that that was -- you know, reached the*
3 *level of any psychiatric illness.*

4 MR. WATTS: So we are going to skip to page
5 10, line 17.

6 BY MR. WATTS:

7 Q *Okay. So Exhibit No. 3 is one of the letters*
8 *that you refer to?*

9 A *Yes.*

10 Q *"To whom it may concern" letter dated April*
11 *10, 2009.*

12 A *It says, Hm-hmm.*

13 Q *"Hm-hmm."*

14 *What was your reason for writing this letter?*

15 A *I was requested by Dr. Connors.*

16 Q *Okay. Did you contribute to the letter --*

17 A *No.*

18 Q *-- in words or thoughts?*

19 A *No.*

20 Q *Okay.*

21 A *These were my observations and impressions.*

22 Q *Okay. So you indicated in the language here*
23 *that you thought she was straightforward, friendly*
24 *and considerate, and you refer to a number of*
25 *stresses related to her training, and I think you*

1 *refer to them as issues that arose during the*
2 *course of her residency.*

3 A *Hm-hmm.*

4 Q *What is your understanding of what those*
5 *stresses were?*

6 A *Well, my understanding, you know, based*
7 *entirely on what Dr. Connors related to me, was*
8 *that, um, she had received, ah, a variety of*
9 *criticism and negative feedback from supervisors;*
10 *that she felt she was being singled out for*
11 *particular scrutinization with respect to her*
12 *performance, I think it's fair to say unjustly so,*
13 *in her view; that, um, efforts on her part to*
14 *rectify the situation or to address the issues that*
15 *had been raised by her supervisors seemed to be*
16 *unsuccessful; and that, um, she felt that her*
17 *training and career were being threatened, and*
18 *that, needless to say, would be highly stressful*
19 *for anyone.*

20 Q *Did you have any reason to dispute her reports*
21 *to you?*

22 A *No.*

23 Q *And --*

24 A *I should say, I had no firsthand observation*
25 *on which one could have disputed those reports. My*

1 *information was entirely related to what Dr.*
2 *Connors related to me.*

3 Q *Sure.*

4 *And I asked you earlier about communication*
5 *with Dr. Ronald Green.*

6 A *Hm-hmm.*

7 Q *What about other individuals who may have been*
8 *in a supervisory role, such as Alan Green or even*
9 *Dr. West? Discussions --*

10 A *No communications or discussions, ah, that I*
11 *have any recollection of.*

12 Q *You indicate that your sense is that it would*
13 *have been quite easy -- quote, It would have been*
14 *quite easy for anyone to become somewhat unhinged*
15 *in the face of these stresses, unquote.*

16 *Again, you were basing that observation about*
17 *your sense, quote/unquote, on her reports to you.*
18 *That's true; isn't it?*

19 A *Yes.*

20 Q *You indicate further, quote, To be sure, she*
21 *was -- she has been disappointed, injured, and at*
22 *times angered by the decisions, unquote.*

23 *Was it your view -- why did you write you felt*
24 *she had been injured?*

25 A *Well, um, because she had been placed in a*

1 situation which, in her view, was, um, I think it's
2 fair to say, untenable.

3 She felt that she was, um, ah, in some
4 respects, ah, um, being subjected, as I said
5 earlier, to excessive scrutinization.

6 I think it's fair to say that Dr. Connors'
7 view of this was that in the view of some
8 individuals in the program, that she, um, was not
9 able to perform up to expectations, and in some
10 respects I believe it's fair to say that, um, she
11 viewed some as having a foregone conclusion that
12 she could not succeed. That, I believe, would be
13 injurious to anyone who felt that they were in that
14 position.

15 Q Did you have any reason to disagree with her
16 feeling as you just described it?

17 A Again, you know, my sense was that Dr.
18 Connors's expression to me was, um,
19 straightforward, honest, forthright. But, again,
20 I -- it just ought to be acknowledged I had no
21 outside contact regarding this, so the perspective
22 on this was, of course, entirely Dr. Connors'.

23 Q Sure. Okay.

24 I am going to show you what's been marked as
25 Exhibit No. 4. This is the second letter that you

1 wrote; is that true?

2 A Yes.

3 MR. KAPLAN: That's --

4 MR. WATTS: I am on page 14, line 8 -- I mean
5 line 16.

6 MR. KAPLAN: Thank you.

7 Continuing on line 19:

8 BY MR. WATTS:

9 Q And that's dated July 2, 2007.

10 Was it -- was this written on Dr. Connors' --
11 at her request?

12 A Yes.

13 Q Okay. And you made some statements in there
14 about -- in there that I wanted to inquire about.

15 A Yes.

16 Q You indicate that you believe she is a capable
17 clinician?

18 A Right.

19 Q What was your basis for that -- making that
20 conclusion?

21 A As I said in the preceding clause, I mean, my
22 clinical contact with her had been quite limited.
23 It was really limited, in fact, to probably less
24 than a handful of on-call times that we shared and
25 then, you know, my general impression of her as an

1 individual.

2 So with the caveat that my exposure was
3 limited, she struck me as being a responsible
4 person, you know, caring, certainly espoused
5 dedication to her patients and concern for her
6 patients. And on that basis I would describe her
7 in that way.

8 Q You indicate you had experience within a
9 handful of clinical situations.

10 Do you have recollection of any of these
11 situations?

12 A Specific recollection, no. General
13 impression, ah, certainly that she performed
14 capably in delivery of emergency psychiatric
15 services. I -- as one is wont to do, I suppose,
16 you tend to remember the times that go badly, and
17 you have concerns about residents, and I certainly
18 would not say that I had any of those concerns in
19 Dr. Connors' case, that I recall.

20 Q So as far as you were concerned, in your
21 experience with her, there were no failures on her
22 part; is that true?

23 A In my limited experience with her, certainly
24 not.

25 Q Did she show any signs of psychotic

1 *behavior --*

2 A No.

3 Q -- *or mental disorder of any type other than*
4 *ADHD?*

5 A *Not to my knowledge.*

6 Q *Did you have any experience with her in a*
7 *clinical setting to conclude whether or not she was*
8 *dependable as a physician?*

9 A *Well, again, quite limited. Insofar as my*
10 *limited contact went with her, I would say she*
11 *proved dependable, but that is based on a very,*
12 *very small fraction of her overall training.*

13 Q *There were some medications that you*
14 *prescribed in your role as prescriber. One of them*
15 *is Adderall.*

16 *Just for the record, what is the purpose of*
17 *Adderall, of prescribing Adderall for her?*

18 A *Well, Adderall is a psycho-stimulant*
19 *medication. It is, ah, commonly used in the*
20 *treatment of attention deficit disorder. And Dr.*
21 *Connors had been using that medication and found it*
22 *to be helpful.*

23 Q *Can you say when -- at the beginning of the*
24 *deposition --*

25 MR. KAPLAN: Your Honor?

1 You are beyond where we agreed.

2 (Brief pause.)

3 THE COURT: Counsel want to speak directly to
4 each other as opposed to trying to putting this on the
5 record?

6 So is there some objection as to what the --

7 MR. WATTS: Your Honor, I think we concluded
8 our testimony, actually, with Dr. Sateia.

9 MR. KAPLAN: That's fine.

10 THE COURT: Okay.

11 MR. WATTS: Thank you.

12 THE COURT: All right.

13 MR. KAPLAN: Your Honor, we do have some other
14 aspects that we would like to read into the record.

15 THE COURT: Is that agreed to by the
16 plaintiff?

17 MR. KAPLAN: I believe so.

18 MR. WATTS: I am not aware of it.

19 MR. KAPLAN: I thought we just talked about
20 it. I am going to begin on line 41.

21 THE COURT: All right. Just take a brief
22 recess; both counsel consult with each other and make
23 sure we are in agreement that this other section should
24 be admitted.

25 MR. KAPLAN: That's fine, your Honor. It

1 wouldn't take more than two minutes to do that.

2 THE COURT: Okay. We will just sit right
3 here.

4 MR. KAPLAN: Okay.

5 (Brief pause.)

6 MR. WATTS: I have no objection, your Honor.
7 Thank you for the time.

8 THE COURT: Okay.

9 MR. KAPLAN: Dr. Sateia --

10 Would you begin on page 41, line 23, please, is
11 where I will start reading.

12 You there?

13 LAW CLERK RACHEL CLARK: Yes.

14 MR. KAPLAN: Okay.

15 Let's see.

16 BY MR. KAPLAN:

17 Q Okay. I want to talk to you for a moment
18 about the medication issue.

19 If I understand correctly, you did not
20 diagnose -- independently you did not diagnose Dr.
21 Connors with ADHD?

22 A No. And as I indicated to Dr. West, and as I
23 indicated to Dr. Green in my e-mail, you know, I
24 did not consider adult ADHD to be a particular area
25 of expertise for me and based my judgments in that

1 *regard on prior evaluation.*

2 *Q You said in your first few answers that -- and*
3 *I want to use your quote. You said, I am, quote, a*
4 *prescriber of convenience, close quote.*

5 *Do you recall those terms?*

6 *A Yes.*

7 *Q And, in fact, your role with regard to Dr.*
8 *Connors, as I understand it, was to be available to*
9 *prescribe the medications that she may need?*

10 MR. KAPLAN: We've agreed --

11 *A Right. In particular, you know, one area that*
12 *is probably worth noting about this is that, um,*
13 *unlike almost all other medications, these*
14 *particular medications, the amphetamine medication,*
15 *Adderall specifically, cannot be written with*
16 *refills. It cannot be phoned in. It must be*
17 *filled with a hard copy written prescription within*
18 *five days of the issuance of the prescription or*
19 *the date thereof, which makes it particularly*
20 *difficult and challenging for patients who take*
21 *these medications to keep up with the scripts.*

22 BY MR. KAPLAN:

23 *Q Sure. But so let me --*

24 *A Hence the convenience in particular with*
25 *regard --*

1 Q So let me ask this question, though, in
2 connection with that specific matter.

3 Could Dr. Connors, if she chose to do so, have
4 called your office and told you that she was
5 running short of Adderall, or was out of it, and
6 needed a prescription, would that be consistent
7 with your being a prescriber of convenience?

8 A Yes. And in the e-mails that have been
9 entered -- the e-mail entered into evidence,
10 Exhibit 5 -- hang on.

11 Q That's okay.

12 A Exhibit 6.

13 Q Right.

14 A Ah, she --

15 Q The one where you say, "I'm out Wednesday and
16 Friday"?

17 A Yes.

18 Q Okay.

19 A And I offered to do essentially that.

20 Q And I just want to follow up on that.

21 So is it correct, sir, that she did not have to be
22 physically in front of you in order to have you
23 write a prescription for the Adderall?

24 A No.

25 Q That's wrong or that's correct?

1 A It's correct that she did not have to be
2 physically in front of me.

3 Q And if she called to get a prescription for
4 Adderall, where would she -- if you know, what
5 would be the options about receiving the actual
6 medication, the pills?

7 A Well, the options are that she can either
8 present herself to the office and pick it up from
9 the staff to whom I have provided it, or, um, that
10 it could be mailed to her.

11 Q So if she, for example, was in a rotational
12 process at the V.A., and it made it difficult for
13 her to get here, in this building, in the building
14 at DHMC, first of all, she could have, if I
15 understand correctly, called you to request the
16 prescription?

17 Is that true?

18 A Correct.

19 Q And secondly, she could have had an option of
20 picking it up, whether or not you were here, from
21 your particular staff, correct?

22 A Correct.

23 Q And thirdly, if that was inconvenient for her,
24 she could have requested that your office send the
25 prescription to her?

1 A Correct.

2 Q Did you ever recall asking for a prescription
3 to be sent there?

4 A Not specifically.

5 Q Do you recall whether or not Dr. Connors was
6 aware of the various options that were available to
7 her to secure her Adderall?

8 A Well, she certainly was aware of the options
9 to come and pick it up because I offered it in
10 writing.

11 MR. KAPLAN: Okay. Now we are going to turn
12 to page 50. And I am going to be reading on page
13 four -- excuse me, line four.

14 BY MR. KAPLAN:

15 Q Sir, I want to read to you an answer to an
16 interrogatory that she -- that is Dr. Connors --
17 provided and ask you to comment on it.

18 It says, quote, Although -- I'm reading
19 literally from -- or verbatim from a response to
20 interrogatory number nine, in plaintiff's responses
21 to defendant's first set of interrogatories. And
22 it says, quote, Although both accommodated my
23 disability early in my training, neither Doctors
24 West nor Sateia acted on my behalf such that I
25 could rightly continue my training and graduate

1 *from defendants' psychiatry program. Both allowed*
2 *the same injurious treatment established by the*
3 *defendants against me. That's a direct quote.*
4 *In your view, does that quote accurately depict*
5 *your relationship with her?*

6 A *No, it doesn't. I have no recollection of Dr.*
7 *Connors ever requesting that I intercede on her*
8 *behalf. And in my discussions with her, I believe*
9 *that I was clear that that was not a role that I*
10 *had been asked to play, nor was it a role that I*
11 *felt it appropriate to play, and that my*
12 *interaction with her would be limited to the*
13 *specific task of prescribing her prescriptions,*
14 *which was accompanied, as I have indicated, by some*
15 *intermittent supportive meetings.*

16 Q *Just one other thing, I believe.*
17 *In Exhibit 7, that was placed in front of you,*
18 *could you take a look at that for a moment, sir.*

19 A *One moment. It's here. It's burred [sic].*
20 *All right. Got it.*

21 MR. KAPLAN: For the record, your Honor,
22 Exhibit 7 to this deposition is Exhibit Z as in zebra in
23 our files.

24 BY MR. KAPLAN:

25 Q *I am actually referring to some of the middle*

1 of the first paragraph. It says, quote, Just so
2 you know --

3 You see that? It's five lines down.

4 A Yes.

5 Q "Just so you know, I am still grappling with
6 the disclosure versus discretion idea and have not
7 yet met with the disability officer, Kalinda
8 Trietley, to discuss the philosophy around this,"
9 and so forth.

10 Do you know whether or not Dr. Connors
11 actually ever met with the disability officer to
12 identify with particularity the accommodations she
13 claimed to be entitled to.

14 A I do not know.

15 Q Did she ever report to you that she did so?

16 A I do not recall any report.

17 MR. KAPLAN: That's all we have.

18 Thank you.

19 THE COURT: All right. Okay. Thank you.

20 Mr. Watts?

21 MR. WATTS: Yes, your Honor. Plaintiff rests.

22 THE COURT: All right. We are going to take a
23 break at this point. I am going to actually stay on the
24 bench and talk with the lawyers, and this is going to be
25 of some length. I really don't anticipate returning to

1 further hearing until at least quarter of 11. So you
2 are going to get some extra time at this point.

3 You are certainly free to leave, but just be back
4 by quarter of 11 again. All right?

5 (The jury was excused after which the following was held
6 in open court at 10:14 a.m.)

7 THE COURT: Okay. Does the defendant have --
8 Mr. Pandolph, do you have a motion?

9 MR. PANDOLPH: Yes, your Honor.

10 We have a motion for -- seeking judgment as a
11 matter of law with respect to plaintiff's claims. I
12 have a brief outline of the motion. May I approach?

13 THE COURT: Yes.

14 MR. WATTS: Your Honor, may I have a moment to
15 go to counsel room?

16 THE COURT: Pardon me? To go to counsel room?

17 MR. WATTS: Yes.

18 THE COURT: Yes, that's fine.

19 (Brief pause.)

20 THE COURT: All right?

21 MR. PANDOLPH: Thank you, your Honor. I will
22 try to be brief, your Honor.

23 Basically talk about the discrimination claims
24 first, and our position is, even assuming the plaintiff
25 has met her initial burden, clearly the defendants have

1 articulated legitimate --

2 THE COURT: All right. Before you actually go
3 to the claims, we have now been talking about
4 compensatory damages, obviously punitive damages. We
5 have already dealt with emotional damages, although
6 technically I am not so sure that that's right when you
7 are talking about a good faith and fair dealing.

8 I would be interested to get your argument in
9 regard to whether the plaintiff has proven compensatory
10 damages, punitive damages, et cetera.

11 MR. PANDOLPH: First, obviously, with respect
12 to punitive damages, we think that that should not get
13 to a jury. Simply stated, the evidence doesn't come
14 close to what is necessary to support an award of such
15 damages. If you read the Fly Fish line of cases --

16 THE COURT: Sure. It requires malice.

17 MR. PANDOLPH: I'm sorry?

18 THE COURT: It requires malice, essentially.

19 MR. PANDOLPH: It requires two elements:
20 wrongful conduct that is outrageously reprehensible and
21 then malice, the two elements. And I think that -- I
22 don't have much more to say than I don't think the
23 evidence supports that.

24 THE COURT: Okay.

25 MR. PANDOLPH: With respect -- I didn't hear

1 much testimony about compensatory damages. I think that
2 the contract -- compensatory damages are not available
3 under contract law even for an emotional distress
4 damages, so I thought that had already been resolved.

5 We filed a motion *in limine* with respect to the
6 contract claims and good faith and fair dealings as the
7 contract claim.

8 THE COURT: Well --

9 MR. PANDOLPH: As you noted in your response,
10 there was no response to that. So we --

11 Second, the only compensatory damages that I heard
12 was this moonlighting aspect, which is a little bit
13 different as, I believe, when the economist testified
14 that she had some moonlighting income. So I was
15 surprised to hear that she claims she didn't have any
16 moonlighting income. But as I understand it, it's mere
17 speculation to say that if she had a license, she would
18 have went to work at New Hampshire Hospital or would
19 have been assigned at a particular weekend and would
20 have made a particular dollar amount. Other than that,
21 I don't think there's been any evidence --

22 THE COURT: Well, it's -- I mean, the first is
23 the issue of whether it's purely speculative, and --
24 right. The question is whether there's sufficient
25 foundation to say that she had a reasonable expectation

1 of making that kind of money.

2 MR. PANDOLPH: I don't think --

3 THE COURT: The second part, just advise me
4 of -- if this is in dispute or if I'm wrong, but this
5 asking for a support letter for licensure in Vermont, or
6 New Hampshire, for that matter, was not a part of the
7 complaint; I didn't think necessarily was a part of the
8 discovery that I was aware of. It was something new.

9 I never heard of that particular allegation that
10 she's entitled to moonlighting damages because Dr. Green
11 did not write a letter supporting her licensure request,
12 and I --

13 MR. PANDOLPH: I agree with that, and let
14 alone link it to any alleged discriminatory conduct.
15 That has never been an allegation. It's not in any of
16 the expert reports, and I agree with that.

17 THE COURT: Well, that is my question. Is
18 that in an expert report? In other words, if -- you
19 know, when she makes the allegations about moonlighting,
20 she could have gotten a job some place, now she's
21 linking that in some way to a failure to respond in a
22 letter of support from -- well, various individuals, but
23 Dr. Green among them. And there seems to be no evidence
24 of actual submissions of requests for licensure in
25 Vermont until after she's gone in November -- November

1 25th of 2009. Is this all new to you?

2 MR. PANDOLPH: It is new to us.

3 MR. KAPLAN: Well, your Honor, I don't want
4 to -- I want to be absolutely accurate because Bill
5 wasn't involved in some of that discovery.

6 We did know that she was claiming the issue of --
7 with regard to the letters, but it was never linked to
8 the inability -- either through their economist
9 originally, which you excluded, nor was it linked by
10 Beck to anything in connection with any expert report.

11 So the answer to your question is that -- I believe
12 she testified in her deposition that she felt she didn't
13 fairly get the letters. I'm not going to deny that
14 fact. But it was never linked to any claim that went
15 further than that testimony and has not been until just
16 now.

17 THE COURT: And was not a part of the
18 economist's expert disclosure?

19 MR. KAPLAN: It was not, your Honor.

20 MR. PANDOLPH: I mean, the economist disclosed
21 that she had moonlighting income, and as you may recall,
22 she said it was --

23 MR. KAPLAN: It was contrary.

24 MR. PANDOLPH: Yes, it was --

25 MR. KAPLAN: It was the opposite. He said she

1 actually got moonlighting income.

2 THE COURT: Oh, all right. Okay. Go ahead.

3 So --

4 MR. PANDOLPH: You want me to move on?

5 THE COURT: So, your objection to the
6 moonlighting income and your objection to the
7 compensatory damages claim is what?

8 MR. PANDOLPH: My objection?

9 THE COURT: Yes.

10 MR. PANDOLPH: As I said before, it's
11 speculative. It was not a claim that was made. There
12 is no link between the alleged failure to submit
13 whatever letters needed to be submitted to Vermont or
14 New Hampshire and the discriminatory conduct alleged by
15 the defendants.

16 THE COURT: Okay. And the -- as far as you
17 understand the compensatory damages claim about lost
18 income, what you are basically saying, I think, what
19 they're saying, is that because she made money after
20 becoming a psychiatrist, the delay in the period of time
21 of now two years -- not one year but two years, forms
22 the basis of compensatory damages she would have been
23 making a certain amount of money two years earlier.

24 MR. PANDOLPH: Yeah. That's not sufficient
25 evidence to support that, and it's a speculative theory.

1 They didn't present an expert that said, you know, in
2 2009 or 2008, the average psychiatrist in Vermont --
3 maybe have done that. They didn't do that. They can't
4 say, okay, I earned -- as you indicated before, you
5 can't say that I earned X in 2000 whatever and somehow
6 that would have meant that that was the kind of income I
7 would have earned if I had been in the work force a year
8 earlier. I thought that had already been ruled on.

9 They don't have any testimony to support loss of
10 income based on a delay in obtaining -- completing her
11 residency.

12 THE COURT: All right. Okay. Anything else
13 that you want to add in regard to damages?

14 MR. PANDOLPH: No.

15 THE COURT: Okay.

16 MR. PANDOLPH: You want me to go on to the
17 claim?

18 THE COURT: Yes.

19 MR. PANDOLPH: Okay. So as I said before, you
20 know, we have briefed this in our summary judgment
21 motion. It's the same -- basically the same argument,
22 even assuming that the plaintiffs have met their --
23 plaintiff has met her initial burden.

24 We have articulated a legitimate, nondiscriminatory
25 reason for any adverse employment action, namely, that

1 there were multiple complaints about her performance,
2 concerns that would have allowed us to reasonably
3 determine that she was not ready to advance to the next
4 level in late 2008 and early 2009.

5 My argument is fairly simple: There's just
6 insufficient evidence upon which a reasonable jury could
7 determine that this was a pretext for intentional
8 discrimination in terms of her nonrenewal or any
9 retaliation.

10 The same is true with respect to failure to
11 accommodate. I don't think there's sufficient evidence
12 upon which a jury could conclude that we failed to
13 provide her with any reasonable accommodation that she
14 requested. It's nothing more complicated than that.

15 THE COURT: All right. So you take the
16 failure to accommodate and divide it into subcategories.
17 What is your understanding of what she specifically says
18 the claim is made up of?

19 MR. PANDOLPH: I think she --

20 THE COURT: The office space, et cetera.

21 MR. PANDOLPH: Sure. It's a quiet office.
22 The inability to obtain her medications or to see her
23 prescribing physician.

24 THE COURT: Okay. It's the office space.
25 It's the medication. It's additional time for the

1 taking of tests.

2 MR. PANDOLPH: That's right.

3 THE COURT: And what else?

4 MR. PANDOLPH: I don't -- I don't think
5 there's anything else.

6 THE COURT: Okay. And in regard to the office
7 space, that actually is limited to her time at the V.A.,
8 roughly three months before they actually got her a
9 permanent space, but the testimony is that they gave her
10 use of a space when she started to see patients.

11 MR. PANDOLPH: Right.

12 THE COURT: She always had space available.

13 MR. PANDOLPH: That's correct.

14 THE COURT: And that, as I understand it, is a
15 limited period of three months?

16 MR. PANDOLPH: Well, when she was in her --
17 there's two parts here. When she was in her psychopharm
18 clinic in 2006 going into 2007, there's -- she had an
19 office every time that she saw her patient and for that
20 half of -- that half day once a week.

21 In terms of the inpatient rotation, the residents
22 don't have offices. They see patients in the hospital
23 setting, so we're getting into 2007 for that. And
24 that's testimony there. There was a resident -- but
25 more importantly, I think, the testimony is there was no

1 evidence that anyone there knew she had ADHD.

2 So then we go into 2008. That's the period of time
3 where Dr. Lambert testified that, no, any time that she
4 had a patient, she had an office on the days that she
5 was at the V.A. Medical Center. Of course, there's no
6 dispute, apparently appears to be no dispute about what
7 happened at Dartmouth. That's a little bit different
8 than saying I need a quiet place to work versus I need
9 the same office every time I come to the facility.

10 It is true that it took a little bit longer. Then
11 she got the same office every time she came to the
12 facility. So that's the -- that's the -- I think
13 basically maybe a two- or three-month period where she
14 had an office every time that she saw her patient, that
15 she had an office for the complete time, all the time
16 that she was at the V.A. Medical Center on those days,
17 and then it turned into an office that -- she had the
18 same office for the rest of her tenure there.

19 THE COURT: So your understanding is that
20 there really is no dispute in regard to quiet space
21 in -- at Dartmouth.

22 MR. PANDOLPH: Right.

23 THE COURT: That it's just limited to the
24 period of time at the V.A. That was extended for about
25 two to three months, but she still would get an office

1 to see people, and then she got her own space.

2 MR. PANDOLPH: I wouldn't say it's a period of
3 time where she didn't have quiet space. I would say it
4 was a period of time where she was not assigned, you
5 know, Office 10 for every time that she came there as
6 opposed to one week she would have Office 10 as opposed
7 to one week she would have Office 5. All were the same
8 quiet space, certainly.

9 THE COURT: Okay. Then how about the
10 medication? What do you think her claim is here, and
11 why is that not -- why does that not justify denial of
12 your motion?

13 MR. PANDOLPH: Well, the claim is -- well, you
14 heard the testimony from Dr. Sateia. The claim is
15 basically for, I think, a two-month period where she was
16 doing an inpatient rotation at the V.A. Medical Center
17 in late 2006, early 2007. She claims that she was
18 not -- she did not have the ability or they kept her
19 from getting her medication. I think you heard the
20 evidence that that's not the case. There were other
21 means to get her medication.

22 More importantly, again, the testimony from the
23 V.A. people is that they were not aware that she had
24 ADHD and this was a specific reason for her to go get
25 her medication.

1 Our position is on a failure to accommodate that
2 requires some obligation on the part of the plaintiff to
3 make it known: Look, I gotta go get my prescription
4 here. I gotta take time off.

5 And if you look -- and then when the remediation
6 plan came into place, they clearly made -- made --
7 indicated that she would be entitled to go get that
8 medication. And the testimony, frankly, is that when
9 she came back from New Hampshire Hospital and started at
10 the V.A. Medical Center again in 2008, she had no
11 trouble getting her medication because she was at
12 Dartmouth on Tuesdays and Thursdays. I think that's the
13 direct testimony.

14 THE COURT: Okay. And how about the
15 additional time claim --

16 MR. PANDOLPH: I think that that's --

17 THE COURT: -- which is what she told Dr.
18 Green at the very beginning, she needed additional time
19 to take tests. Any indication that that was not
20 accommodated?

21 MR. PANDOLPH: I don't think there's any
22 evidence that that was not accommodated.

23 THE COURT: Okay. And do you understand her
24 to argue any other failures to accommodate?

25 MR. PANDOLPH: I did not hear any.

1 THE COURT: Okay. All right? How about the
2 contract?

3 MR. PANDOLPH: Similarly, I heard -- there was
4 no testimony, no evidence of any promise, express or
5 implied, made by defendants as to her residency, let
6 alone that there was some promise made --

7 THE COURT: What's at issue -- I mean, you
8 have an express contract, theoretically. Of course the
9 contract ends in 2008. So we were going forward on an
10 implied contract, the potential of some representations
11 that were made to her which form the basis of an implied
12 contract, which were separate and apart from the good
13 faith and fair dealing because you can't have
14 duplicative arguments here. And so I allowed that good
15 faith and fair dealing to go forward.

16 So my question is, what evidence is there about an
17 implied contract, representations upon which she
18 reasonably relied to form the basis of an implied
19 contract, and then how are those facts distinguishable
20 from the ones which -- which related to the good faith
21 and fair dealing claim?

22 MR. PANDOLPH: I didn't hear any evidence -- I
23 mean, there was no evidence, no testimony from Dr.
24 Connors about any promise, any such promise. There was
25 no pointing to any documentation or anything of that

1 nature, any oral promise by anybody. There was just no
2 testimony on that point.

3 THE COURT: Okay. And no distinction in fact
4 between the good faith and fair dealing claim and the
5 breach of contract claim?

6 MR. PANDOLPH: Right. And with the good
7 faith -- you know, even assuming that the defendants are
8 bound by a duty of good faith to evaluate her
9 performance, again, I don't think any reasonable jury
10 could conclude that they did not act in good faith
11 evaluating her performance.

12 I mean, sort of -- the premise of the plaintiff's
13 testimony, frankly, has been, you know, not just cause,
14 but it's essentially been -- is criticisms or -- did not
15 provide sufficient cause to allow defendants not to
16 renew my contract.

17 I don't know where that intersects with good faith
18 and fair dealing, but I don't think a reasonable jury
19 could conclude that.

20 THE COURT: But of course the Court has the
21 obligation to interpret the evidence at this point in
22 the light most favorable to the plaintiff.

23 MR. PANDOLPH: Still, I still don't think a
24 reasonable jury could conclude that they acted in bad
25 faith. You know, maybe you disagree; maybe she

1 disagrees. That's not bad faith. Maybe -- you know,
2 the evidence is that there were concerns, multiple
3 concerns from third parties, from psychologists,
4 psychiatrists, people at the V.A. Medical Center, and
5 the defendants acted on those concerns and took those
6 into consideration. I don't know how you get bad faith
7 from that.

8 THE COURT: Well, my initial concern is how do
9 you differentiate between the claims for implied
10 contract as opposed to good faith and fair dealing?
11 Aren't there -- is that the same conduct essentially
12 underlying both claims?

13 MR. PANDOLPH: I -- I mean, I suppose you
14 could say the good --

15 THE COURT: Well, I guess you would agree with
16 that representation at this --

17 MR. PANDOLPH: Yes.

18 THE COURT: Right. Okay.

19 MR. PANDOLPH: Thank you.

20 THE COURT: Okay. All right? Anything --

21 All right, Mr. Watts?

22 MR. WATTS: Naturally we dispute the motion.

23 THE COURT: Okay. Can we go first to the
24 damages that you think you have established.

25 MR. WATTS: I think that there is sufficient

1 evidence for the jury to conclude that Dr. Connors could
2 have engaged in moonlighting while she was at Dartmouth
3 during the '06-'09 period and that she was precluded
4 from doing so by Dr. Green's reluctance to and refusal,
5 essentially, to support her.

6 THE COURT: Did you, in the course of
7 discovery, or in preparation of the case, disclose to
8 the other side, either in your expert's report or in any
9 other way, that you linked up the moonlighting damages
10 to Dr. Green's refusal to support her by making a
11 specific letter of recommendation available to her?

12 MR. WATTS: Yes. In her deposition, Dr.
13 Connors discussed the denial of moonlighting
14 opportunities and the fact that Dr. Green had refused or
15 ignored her requests for many, many, many months, and
16 that that precluded her until, finally, after she had
17 already left the program to make the applications.

18 THE COURT: And you can say that she was
19 unable to moonlight because she couldn't get a
20 licensure, and she couldn't get a licensure because Dr.
21 Green didn't write a letter of recommendation?

22 MR. WATTS: Absolutely. And that's what she
23 testified to in her deposition, and that's what she
24 testified to here.

25 THE COURT: Is there a -- some requirement of

1 the state of New Hampshire or the state of Vermont that
2 would require a letter of recommendation from the head
3 of the program?

4 MR. WATTS: Yes. As she testified, the
5 program director must sign off on her application.

6 THE COURT: I didn't hear that, actually.

7 MR. WATTS: That's what she was --

8 THE COURT: That --

9 MR. WATTS: That was the -- that she testified
10 to that just a moment ago, and she has testified to it
11 in her deposition.

12 THE COURT: That the state of Vermont requires
13 that the head of the program sign off?

14 MR. WATTS: That's what she said: that Dr.
15 Green had to support her application for licenses in
16 both states. And without that, she couldn't pursue any
17 moonlighting, and, from her own observations, she
18 testified, that resident physicians who have a license
19 are permitted and encouraged to moonlight and do
20 moonlight, and when they do moonlight, they earn \$1500 a
21 weekend, from her own experience. That's not
22 speculative; that's observation.

23 THE COURT: Okay.

24 MR. WATTS: And that she was precluded from
25 earning those funds.

1 THE COURT: And did she actually request
2 licensure? I mean, there's some dispute as to whether
3 she ever made a formal request, did any -- anything in
4 writing.

5 MR. WATTS: You mean to the state or --

6 THE COURT: To the state or --

7 MR. WATTS: -- with Dr. Green?

8 THE COURT: -- for that matter, to Dr. Green.

9 MR. WATTS: Well --

10 THE COURT: Anything in writing to verify that
11 claim?

12 MR. WATTS: There is in evidence
13 communications to Dr. Green requesting that he sign off
14 on her application. And then as far as the state's
15 concerned, I think she testified that she was
16 essentially discouraged from applying in New Hampshire
17 because of his reluctance, and then later decided
18 because of her commitments on her scholarship to just
19 pursue Vermont. That didn't happen until well into
20 2009.

21 THE COURT: So, you are suggesting there are
22 documents in the record which verified the fact that she
23 had made these requests of Dr. Green?

24 MR. WATTS: That's my understanding, yes.

25 THE COURT: Do you know where that is?

1 MR. KAPLAN: Your Honor, may I step out for
2 one second, just pick something up?

3 THE COURT: Yes. Yep, okay.

4 MR. KAPLAN: Thank you.

5 MR. WATTS: I can't identify it at the moment,
6 but I will be happy to as soon as we take a break and I
7 can look through the evidence -- the documents --

8 THE COURT: Okay.

9 MR. WATTS: -- if I may?

10 THE COURT: All right.

11 MR. WATTS: So she described the process that
12 is required for her to fulfill in order to apply for the
13 license, and without the license she could not
14 moonlight.

15 THE COURT: Okay. And so that would be a
16 lost -- that would be compensatory damages under what
17 theory? Under breach of implied contract? Under good
18 faith and fair dealing? Under retaliation? Or --

19 MR. WATTS: It's under -- it's essentially
20 losses under the discrimination claim, retaliation claim
21 and the contract claim, not so much -- not the covenant
22 claim. Each one of those carries, of course, a
23 potential for compensatory losses, and that's what we
24 are presenting.

25 THE COURT: Okay.

1 MR. WATTS: And then as far as the
2 discrimination claim and the retaliation --

3 THE COURT: Well, what about punitive damages?

4 MR. WATTS: I'm sorry?

5 THE COURT: Do you think this is outrageous
6 conduct? Do you think she has established outrageous
7 conduct --

8 MR. WATTS: I do.

9 THE COURT: -- or malice?

10 MR. WATTS: I do. And Dr. Beck particular --
11 specifically testified that, in his view, based on his
12 experience, it was reckless disregard of Dr. Connors'
13 rights, and that, in the case law, equates with malice,
14 and so I think we have presented that.

15 And she has presented many episodes of the
16 defendant misleading her, misinterpreting and miscasting
17 her conduct, and Dr. Lambert, for instance, saying her
18 notes are later and later to Dr. Green, and yet there's
19 zero evidence of that.

20 It became clear, especially after Dr. Connors asked
21 for a new supervisor to replace Dr. Watts, and then a
22 new supervisor to replace Dr. Green as program director
23 for her, that these people were not only just annoyed
24 but they were upset, angry with Dr. Connors, to the
25 point where they were distorting almost everything that

1 she did. And that is *prima facie* evidence of malice and
2 disregarding her rights by ignoring the one -- the item
3 we were just discussing, ignoring her request for
4 licensure application cooperation and repeatedly
5 miscasting her conduct.

6 This has to be purposeful. It has -- it is a
7 pattern. And there's just -- there's no escaping that.

8 THE COURT: Well, how is that argument
9 impacted by the fact that she had a -- she had a
10 hearing? She had a full hearing, and she was able to
11 argue her case, and essentially the nonrenewal was
12 upheld.

13 MR. WATTS: Your Honor, everyone that was
14 judging her conduct in that hearing was an employee of
15 Dartmouth-Hitchcock Medical Center, and that alone casts
16 bias against these people.

17 THE COURT: Okay. So what you are suggesting
18 is because the hearing committee was made up of people
19 who were employed by Dartmouth, that necessarily they
20 also engaged in malice?

21 MR. WATTS: No, I don't think they engaged in
22 malice. I think that they had a preconceived notion or
23 a bias because of their loyalty to the organization. I
24 mean, ultimately they all report to the same person at
25 the top, through the channels, and sitting in judgment

1 of a person who is essentially an outsider to a program
2 director, that's -- I think it's unrealistic.

3 THE COURT: But what evidence do you have of
4 that? The only evidence you have is that they're
5 employees of Dartmouth, but to say that you have got
6 evidence that they -- they were biased, I mean, there is
7 no evidence on the record in regard to the good faith
8 hearing at all, for that matter.

9 So then the question becomes, how does the fact
10 that there was in fact a good faith hearing impact the
11 nonrenewal and therefore becomes relevant to this
12 litigation?

13 What you are basically saying is that Dr. Green
14 nonrenewed her. It was Dr. Green, and all Dr. Green, as
15 if -- as if the hearing didn't exist. And of course the
16 process is they had the full power to ignore or reverse
17 the determination made by Dr. Green.

18 It becomes a little bit more complex, doesn't it,
19 when you have a full good -- full hearing in which she
20 is afforded due process rights?

21 MR. WATTS: It does become more complex
22 because you have to take a look at the process and who's
23 involved in the process. There's no doubt about that.
24 She did have the opportunity to present -- there were
25 two hearings, actually.

1 At the first hearing, Dr. Green really didn't make
2 much of a presentation, apparently, according to
3 Jennifer Connors, and so they had to have another
4 hearing because she didn't know what to respond to
5 because he hadn't delineated out what his case was
6 against her.

7 At the second hearing, the -- his hearing memo is
8 in evidence here, and he portrayed her in the same way
9 that he had portrayed and his colleagues had portrayed
10 her throughout the process, and then she had an
11 opportunity to speak.

12 The bottom line here is -- I don't have any -- I
13 don't have a specific transcript and so I cannot
14 evaluate that, but I can say that -- what I said before:
15 That it appears to have been a bias formed because all
16 these people worked for Dartmouth.

17 THE COURT: But there's no evidence in the
18 record here about what happened during that process:
19 transcript, et cetera? Okay.

20 MR. WATTS: That's true.

21 THE COURT: All right. So now going to
22 your -- your claims; first, the discrimination claim.

23 MR. WATTS: The discrimination claim. It's
24 clear that -- that Dartmouth people, the Dartmouth
25 institution, which includes New Hampshire Hospital and

1 the V.A., were well aware that Jennifer Connors has
2 ADHD.

3 As you observed, Dr. Green and Dr. Beck testified
4 that Dr. Green should have concluded right from the very
5 beginning because of her requests for tests, testing
6 time, extra testing time, and the fact that she
7 testified that he -- she told him she had a learning
8 disability -- that should have triggered something.

9 The employer --

10 THE COURT: What is the evidence of what she
11 said to Dr. Green or, for that matter, to anyone else
12 defining her -- her disability and in requesting
13 accommodation? What specifically did she say?

14 MR. WATTS: She in -- well, she, first of all,
15 informed Dr. Green, specifically telling him that she
16 had a learning disability right up front in 2006.

17 THE COURT: Okay. That was not ADHD. That
18 was just a learning disability. Needed extra time to
19 take tests.

20 MR. WATTS: Right, but --

21 THE COURT: Okay.

22 MR. WATTS: But that has a broader
23 connotation. It should have a broader connotation to a
24 psychiatrist what a learning disability is requiring
25 tests. But beyond that, there are e-mails in evidence

1 and notes in evidence and requests in evidence,
2 particularly the request that she made for -- when she
3 prepared the remediation statement, the remediation
4 plan. Her proposal for remediation plan referred
5 specifically to ADA accommodations and her repeated
6 request for officers -- an office instead of being
7 shuffled off to the coffee cove that was used as a
8 common --

9 THE COURT: Okay. So let me just try to again
10 get a list of the actual claims that you have of how she
11 was discriminated. Number one is the office space.

12 MR. WATTS: Correct.

13 THE COURT: She -- and that particularly, is
14 it not, is limited to that period of time at the V.A.
15 during which she did not have her own space, her own
16 office?

17 MR. WATTS: That's correct.

18 THE COURT: There's nothing about Dartmouth or
19 Mary Hitchcock and office space that forms the basis of
20 your claim.

21 MR. WATTS: That's correct.

22 THE COURT: Okay. So then the second is the
23 medication, that she was not afforded an adequate
24 opportunity to go get her medication.

25 MR. WATTS: Correct.

1 THE COURT: And then the third is that she
2 needed additional time for the taking of tests.

3 MR. WATTS: Correct.

4 THE COURT: There really has been no evidence
5 about that. I assume that she was afforded additional
6 time --

7 MR. WATTS: I think so.

8 THE COURT: -- for test taking. Okay. So
9 what else is there? What else is the basis of your
10 claim?

11 MR. WATTS: Feedback from her supervisors that
12 would advise her as to what their concerns were. There
13 were times when she -- for instance, in 2008, when the
14 only feedback she received from Dr. Lambert, who didn't
15 even evaluate her for many months in 2008, formal
16 evaluations that Dr. Connors could review and understand
17 what it is that they had -- may have concerns about.
18 Dr. Connors didn't know about any of that until November
19 of 2008; that -- that Dr. Connors --

20 THE COURT: How is that related to your
21 discrimination claim? In other words, how does the fact
22 that she did not get feedback, how does that stem out of
23 a sense that she's going to be discriminated against
24 because of her, at that point, learning disability?

25 MR. WATTS: Because the standard practice in

1 these residencies is to -- is for heavy supervision,
2 particularly in the psychotherapy setting, in the
3 inpatient setting, for residents, and the ACGME and the
4 Dartmouth regulations are replete with requirements that
5 these people had to provide her with feedback and
6 supervision and monitoring, and --

7 THE COURT: And you think they didn't do that
8 because they were discriminating against her?

9 MR. WATTS: That's right. Well, look at the
10 example that I just made: That Dr. Lambert didn't
11 provide her with any evaluations from June through the
12 end of -- into October, and she was her supervisor at
13 the V.A. and oftentimes not even showing up for
14 supervision, hands-on supervision. That was her
15 testimony.

16 THE COURT: But Dr. Lambert testified that she
17 had a lot of contact with Dr. Connors and was
18 continually giving her feedback. I mean, that's the
19 evidence which has been --

20 MR. WATTS: Well, that's --

21 THE COURT: -- introduced from her. Obviously
22 Dr. Connors disagrees with that.

23 MR. WATTS: Correct.

24 THE COURT: But --

25 MR. WATTS: Dr. Connors' record of all of that

1 is diametrically opposed to that, and it's clear from
2 the evaluations that there was no evaluation from June
3 on, and the only thing that was happening is Dr. Lambert
4 was back-channeling with e-mails, Dr. Green telling her
5 she was later and later, and there was other concerns
6 about her conduct, and she didn't -- there was no
7 advisories to Dr. Connors about that until she walked
8 into a meeting in November -- on November 20th, 2008,
9 where it was supposed to be a meeting to discuss her
10 fellowship and her application for the fellowship in
11 child and adult psychiatry, and, bang, they hit her with
12 all these e-mails that had been -- that Dr. Green had
13 collected against her.

14 And, I mean, that alone, that ambush-type conduct
15 alone, shows that these people were, in essence,
16 deceiving her, not evaluating her formally, as they are
17 supposed to do, but actually back-channeling criticism
18 against her to undermine her in the program.

19 THE COURT: So really, the thrust of the
20 discrimination claim is not laid at the hands of Dr.
21 Green because he is in receipt of all these negative
22 observations of Dr. Connors. What you are now saying is
23 that the problem lies more with the people with whom she
24 was working who were saying these negative things about
25 her to Dr. Green.

1 MR. WATTS: No, that's not what I am saying.

2 THE COURT: Is that correct?

3 MR. WATTS: What I am saying is that Dr. Green
4 led the way in terms of negativity about Dr. Connors, in
5 terms of his collecting negative perceptions of her, and
6 all the while he personally evaluating her very
7 positively, so that it's -- it's a deception that, you
8 know, he says to her, You have done a fine job when I am
9 supervising you, and at the same time he is going out
10 and collecting criticisms against her.

11 THE COURT: Well, right. She does well at New
12 Hampshire Hospital. He then responds, You are doing
13 very well, which is an accurate reflection of what she
14 is told. And then later on he begins to get all of
15 these negative responses, and that leads ultimately to
16 the November 2008 meeting.

17 MR. WATTS: There is a memo in the file, in
18 Exhibit 96, where Dr. Green says, in late 2007, after
19 she had gone through the -- successfully through the
20 remediation, he didn't want to renew her.

21 THE COURT: Okay. All right. Well, we have
22 got office space. You have got the medication.
23 Additional time, there's no evidence about that. And
24 now you have feedback, the lack of feedback.

25 What other areas of discrimination are you relying

1 upon?

2 MR. WATTS: The fact that for much of the time
3 during her residency she was not assigned any patients.
4 Residents, as Dr. Beck testified, residents are to be --
5 and the ACGME regulations --

6 THE COURT: You have got testimony from
7 witnesses you called who say that when she went to the
8 V.A., she started with no patients at all. There was a
9 period of time in which perhaps she didn't have an
10 office, but that not only did she get patients, but she
11 took on more than the average person, and, in fact, I
12 think your client actually said that. I mean, all of a
13 sudden she was taking on a lot of patients, more than
14 perhaps others were taking on. So how -- how did you
15 prove that she was denied patients?

16 MR. WATTS: That was -- what you are referring
17 to, that testimony, was in late 2008. Periods of time
18 in 2006, she did start out slow with patients, but
19 working on through 2006, and then after New Hampshire
20 Hospital, in the spring of 2007, when she was not a new
21 resident and had not just arrived on campus, she had no
22 patients. None. And the documentation is replete with
23 requests for patients and her observing, Hey, I have no
24 patients.

25 It is true that when she had no patients, she also

1 had no office, but the fact is, she needed an office to
2 write notes and do research and other endeavors that
3 residents are expected to do.

4 THE COURT: So then how would you respond to
5 what probably would be their response? They would say
6 she complained about the lack of patients and the
7 office, and then within a period of two to three months
8 not only did she have a dedicated office but a dedicated
9 office to herself, and also she was getting more
10 patients than other people, and that was in response to
11 the complaints that she made. And then how is that
12 evidence of discrimination?

13 MR. WATTS: Your Honor, she was without an
14 office for five months. There's no excuse for that.
15 She didn't have a telephone assigned to her. She didn't
16 have a pager assigned to her. She was taken off of the
17 roster so that the central assigning people had no idea
18 of how to reach her. She was lost in space, and that --
19 they didn't do that to other residents. There's no
20 evidence of that. That's not a standard practice, is to
21 send a resident off into space.

22 And yes, ultimately, finally in July of 2007, sure,
23 she did have a phone, she did have an office, and she
24 did have a pager, but there were key times in '06 and
25 '07 when she didn't. She didn't have patients and she

1 didn't have an office, and those are the times when
2 these allegations arose.

3 THE COURT: Okay. So what you are saying is
4 that as of July of 2007, she got her own office. She
5 had her own patients.

6 MR. WATTS: 2008, I'm sorry.

7 THE COURT: Oh, all right. Okay. Go ahead.

8 MR. WATTS: Okay. So those accumulate at
9 these key points in time when some of the supervisors
10 were elicited to offer up -- some people that were
11 supervisors and some people that weren't even
12 supervisors -- Dr. Bolton, for instance, supervised her
13 for one day -- and various others.

14 Dr. Coursin, C-O-R-S-O-N [sic], indicated that he
15 had failed her. He failed to supervise her. He didn't
16 teach her properly. Dr. Detore, who I guess we are
17 going to hear from, blasted her for a bizarre note that
18 he taught her to perform. He taught her to explore a
19 particular approach, and she testified about that.

20 And so it's -- there are elements all the way
21 throughout her residency that indicate that, from Dr.
22 Green on down, these people were averse to her,
23 especially Dr. Watts yelling at her and humiliating her
24 in front of others, and no doubt he will deny it, but --
25 saying that we don't give a damn about your ADHD.

1 These are facts that Jennifer Connors experienced,
2 and you can imagine the repeated drum beat of these
3 negative vibes pounding away on someone with ADHD, or
4 even someone without ADHD, would be at minimum
5 discouraging if not fatal.

6 THE COURT: Okay. What else?

7 MR. WATTS: And the point that I made earlier
8 was that they forced her into a no-win situation, and
9 that is discrimination. I'm sorry to interrupt you.

10 THE COURT: What else -- anything else aside
11 from office space, medication, the additional time,
12 again, and the lack of feedback and not getting enough
13 patients?

14 MR. WATTS: I think that covers it, as long as
15 there's an understanding that the criticisms and
16 allegations radiated from those times when she --

17 THE COURT: Now, in regard to retaliation --

18 MR. WATTS: -- combinations.

19 THE COURT: -- you are focusing in upon Dr.
20 Green. Dr. Green, by the time he made the decision of
21 nonrenewal, had received a lot of comments -- you have
22 acknowledged that -- from various participants in the
23 program, Dr. Lambert being one, but other doctors as
24 well; Dr. Watts, et cetera. So how do you think you
25 have proven termination -- or nonrenewal in linking it

1 to discrimination?

2 MR. WATTS: Well, I think it's a complete
3 process, your Honor. The whole -- the treatment that
4 she received led up to her nonrenewal; that during these
5 times, as I had mentioned, when she didn't have
6 accommodations, there were these allegations against
7 her, and that created a background, an aura, that, you
8 know, this person is a loser as far as Dr. Green's
9 concerned.

10 THE COURT: But you in your complaint said
11 that she got nonrenewed, or terminated, in your words,
12 because she made a complaint of discrimination.

13 MR. WATTS: Well, that's true. What I am
14 saying here is that when she requested the
15 accommodations and she requested ADA accommodations and
16 the remediation plan that she proposed, from there on
17 out they were on notice -- they were on notice before
18 that, but they were formally on notice at that point,
19 and they began to respond with an office, but by then
20 the damage had been done.

21 And there was a record that Dr. Green would create
22 with these e-mails eliciting, you know, How are these
23 things going with Jennifer Connors? And yet none of
24 those -- very few, one or two of those criticisms made
25 it into her evaluations, that she knew about, except, of

1 course, for when Dr. Schwartz and others sat her down
2 and said, Look, this is -- you know, these are -- I am
3 trying to teach you and counsel you and supervise you
4 about how residents handle these particular problems.

5 And those are teaching moments, and that's
6 understood, and that's not necessarily a distorted
7 criticism by whoever the supervisor was at the time.
8 But the point is that the nonrenewal was based upon a
9 fountain of misleading, exaggerated claims against her
10 that Dr. Green encouraged and didn't even look into.

11 I mean, for instance, he told Dr. Connors, as she
12 testified, that there would be an investigation into the
13 events surrounding her conduct in 2006 concerning some
14 of those allegations against her, and Dr. Pomeranz
15 ultimately said there was no harm done to any patients.
16 Dr. Green said there was going to be an investigation,
17 and they would decide whether or not to fire her at that
18 point.

19 Well, there was no evidence of an investigation at
20 all. He didn't do anything. He didn't investigate any
21 of -- so far as we know in the evidence, he didn't
22 investigate any of the allegations against her. He took
23 them at face value. And that is disregard, reckless
24 disregard of Dr. Connors' rights.

25 The fair hearing people are not going to, for

1 instance, formally investigate what happened, that we
2 know of anyway. And so they take what he presents and
3 she presents, and that's it.

4 Well, Dr. Green, all he did was present what his
5 e-mail research discovered, and as we go through each
6 one of those when Dr. Green testifies, I think the Court
7 will see that most of them are hollow; all the others
8 are exaggerated.

9 THE COURT: All right. To the extent --

10 MR. WATTS: This is a purposeful --

11 THE COURT: To the extent there was a lack of
12 investigation, you certainly had the opportunity to call
13 Dr. Green to show there was no investigation other than
14 reliance upon the statements that were made by other
15 persons who were dealing with Dr. Connors directly.

16 And then of course there's the more subtle question
17 as to whether in fact there's an obligation on his part
18 to conduct a separate, independent, thorough
19 investigation other than to rely upon people who were
20 working with her.

21 MR. WATTS: Well, he --

22 THE COURT: Regardless. And the last thing is
23 the implied contract and good faith and fair dealing.
24 How have you established those?

25 MR. WATTS: As we set out in our complaint,

1 the ACGME and the GME and Dartmouth-Hitchcock
2 established certain standards upon which they would --
3 these are in evidence -- in which they would act in the
4 residency, and they failed to do that.

5 Jennifer Connors likely relied on these policy
6 documents that indicated that you will have strong
7 supervision; strong monitoring; evaluation system is
8 electronic-based system that will give you feedback,
9 current feedback on your progress; and they also --
10 these same policies indicate that the institution will
11 not discriminate against individuals with disabilities,
12 and we contend that their conduct breached their -- the
13 implied contract that is found in the -- those policy
14 documents.

15 As far as the covenant is concerned, the contract
16 claim does not include or focus upon some key acts that
17 the defendant engaged in. For instance, the contract
18 claim does not address the fact that rather than
19 assigning her an office, they sent her to a room with a
20 coffee pot and a kitchenette that was a common room for
21 everybody to use and come in and use the phones and the
22 computers and all that. And when Dr. Schwartz sent her
23 to that common room, rather than considering that she
24 needed an office because she had ADHD, has ADHD, that
25 was an act of bad faith.

1 He was apparently angry after some of these events
2 that he either misinterpreted or misconstrued, and -- so
3 I think the coffee pot episode is one example.

4 Another example is Dr. Watts yelling at her, saying
5 that nobody -- Everybody here hates you, or Nobody here
6 likes you, and We don't -- Nobody here gives a damn
7 about your ADHD.

8 Those are above and beyond the call and above and
9 beyond the contract claim and demonstrate bad faith,
10 and -- on the part of the defendant. She was
11 humiliated. And the fact that they made decisions,
12 pivotal decisions based upon back-channeled e-mails
13 rather than advising her directly, sitting down with her
14 and speaking with her. In a couple of cases, the
15 supervisor said to her, You have done a fine job here,
16 and yet ended up telling Dr. Green the opposite.

17 And so these are -- these are evidences of bad
18 faith that support the claim to -- of covenant and fair
19 dealing.

20 THE COURT: They are also facts that you are
21 relying upon to show implied contract, by the way,
22 aren't they?

23 MR. WATTS: I'm sorry?

24 THE COURT: Aren't you? I mean, the fact that
25 she went to the room, the coffee pot room, you have made

1 a very big point of the fact that that is evidence of
2 discrimination, and it's also evidence of implied
3 contract violation, I thought, and so now you are going
4 to use that same conduct to show good faith and fair
5 dealing violation.

6 MR. WATTS: Well, your Honor, with all due
7 respect, I believe we filed a memo that delineated out
8 the evidence that is separate from an implied contract.

9 THE COURT: Yeah, that's your argument.
10 Right. I thought there was going to be some evidence in
11 which you talked about this is what the contract meant.
12 This is what the contract meant to me. This is what the
13 contract meant to you. And it's separate and apart from
14 the issue about the manner, you know. It's a little
15 closer with Dr. Watts screaming at her.

16 All right. So I understand -- you know, I
17 understand what your position is. Is there anything
18 else that you want to say at this point?

19 MR. WATTS: I don't think so.

20 THE COURT: Okay. You want to respond?

21 MR. PANDOLPH: One small point, your Honor.

22 I think that's -- that was a remarkable distortion
23 of the evidence. I mean, there was a complete
24 distortion of the evidence, but I am not going to go
25 into responding to every point here.

1 But the other point is this: The V.A. Medical
2 Center is not a defendant in this case. It's a
3 federally-operated, federally-controlled facility.
4 Dartmouth-Hitchcock, Mary Hitchcock Memorial Hospital,
5 is not responsible for the acts or omissions -- alleged
6 acts or omissions of employees of the V.A. Medical
7 Center.

8 THE COURT: So that would mean that the whole
9 argument about office space becomes immaterial?

10 MR. PANDOLPH: Among other things because, as
11 you have heard, yeah, he said DHMC office space, that's
12 correct, that was fine. Everything else, frankly, that
13 I have heard for the last 15 minutes, has been the
14 conduct of the employees of the V.A. Medical Center, not
15 conduct of employees of Dartmouth-Hitchcock Medical
16 Center or Mary Hitchcock Memorial Hospital.

17 THE COURT: Well, remind me, Dr. Watts is --

18 MR. PANDOLPH: Dr. Watts is a federal
19 employee. He is an employee of the V.A. Medical Center.
20 He has never been employed by any defendant.

21 THE COURT: He has never been employed by
22 Dartmouth or Mary Hitchcock?

23 MR. PANDOLPH: No.

24 THE COURT: Dr. Lambert obviously the same?

25 MR. PANDOLPH: The same with Dr. Schwartz.

1 The same with all of the people that sent those e-mails
2 to Dr. Lambert or sent them to others in the fall of
3 2008 that were provided to Dr. Green.

4 THE COURT: All right. I am going to take
5 this --

6 MR. KAPLAN: Your Honor, can I clarify?

7 THE COURT: Yes.

8 MR. KAPLAN: You had asked him a question and
9 just so I clarified for the record on the moonlighting
10 issue?

11 THE COURT: Yes.

12 MR. KAPLAN: There was -- there was a couple
13 of questions on that, and I want to -- because I
14 commented on it, I just want to be as accurate as I can.

15 I will tell you that Dr. Connors said in regard to
16 this in her deposition, because you were inquiring about
17 this: "And with whom did you make a request to work or
18 moonlight?

19 "I requested the license that's required to
20 moonlight from GME and Dr. Green."

21 If you continue to read through the next three
22 pages, there's no accusation or allegation that Dr.
23 Green improperly denied her in any way that application
24 or that material. It came up here. But she did not
25 testify to that here. And she did not raise it in her

1 deposition, and I don't think it had ever been raised
2 before. And you asked about that and I just wanted to
3 try and clarify that.

4 THE COURT: Okay. I am going to take a
5 15-minute -- yes?

6 MR. WATTS: May I just respond to what Mr.
7 Pandolph --

8 THE COURT: Right.

9 MR. WATTS: -- indicated?

10 THE COURT: Yes.

11 MR. WATTS: Thank you.

12 The Graduate Medical Education handbook is in
13 evidence here. First page: DHMC Reporting
14 Relationships. Dartmouth Medical School Board of
15 Trustees, Mary Hitchcock Memorial Hospital, U.S.
16 Veterans Affairs Department, all governed by the board.
17 DHMC board of governors and the Graduate Medical
18 Education program encompasses those other facilities but
19 is operated and directed and supervised by
20 Dartmouth-Hitchcock Medical Center and Mary Hitchcock
21 Memorial Hospital.

22 Dr. Green in this case or -- no matter what the
23 program is, whether it's surgery or whatever the --
24 these people are -- the defendants are operating the
25 residency program.

1 THE COURT: Okay.

2 MR. PANDOLPH: And operating the V.A. Medical
3 Center, in fact, you will see Dr. Green wrote a letter
4 to Dr. Shirley at the V.A. Medical Center asking if Dr.
5 Connors could come back and continue her residency
6 there. He had to get that permission from the V.A.
7 Medical Center. That was not something he directed or
8 controlled.

9 MR. WATTS: And Dr. Watts was the assistant
10 director of the residency program.

11 THE COURT: Okay. All right. I am going to
12 take a 15-minute break.

13 (Court was in recess at 11:11 a.m.)

14 (The following was held in open court at 11:25 a.m.)

15 THE COURT: The defendants have filed a motion
16 for judgment based upon the state of the record. They
17 have raised a number of issues:

18 First, there has been a lack of proof in regard to
19 damages; second, the discrimination and retaliation
20 claims should be dismissed, first, because of lack of
21 damages, but also on the merits, and that there's been
22 no evidence of an implied contract separate and apart
23 from the renewal of additional contract, and also no
24 proof of good faith and fair dealing.

25 The Court intends to write a lengthy opinion on the

1 issues that have been raised by the defense, but I want
2 to address each of them on the record. Again, this is
3 going to be followed up with the opinion, and it's
4 intended to be the definitive ruling from the Court, now
5 the ruling today, but these are the definitive reasons
6 for the ruling.

7 First, in regard to damages: There are a number of
8 damages, types of damages which have been raised by the
9 lawsuit in general. The plaintiff has not requested
10 nominal damages. She did request emotional damages.
11 She did request compensatory damages, and she did
12 request punitive damages. And let me address all of
13 those.

14 First, no nominal damages requested.

15 Second, in regard to emotional damages, the Court
16 excluded earlier in these proceedings the emotional
17 damages. Arguably, emotional damages could have been
18 asserted in regard to the good faith and fair dealing
19 claim. It would be a matter of some dispute. It could
20 not be raised in regard to the discrimination and
21 retaliation and contract claims for the reasons stated
22 in my earlier opinion. However, there was no evidence
23 in regard to emotional damages, and, frankly, emotional
24 damages is not at issue in this case.

25 Next, punitive damages. The Court will write a

1 lengthy opinion on punitive damages. Essentially, the
2 requirement is that this be outrageous conduct and that
3 there be malice. That's the law in Vermont, New
4 Hampshire, and just about everywhere in the world.

5 And in this particular case, I find that there is
6 no way the jury could find punitive damages and will
7 rule as a matter of law that the Court would not
8 instruct on punitive damages.

9 If one takes the evidence in the light most
10 favorable to the plaintiff, as I do in this particular
11 context, arguably there could be a disregard of her
12 rights. That's insufficient as a matter of law for
13 punitive damages. There is a complete lack of any
14 suggestion, really, of malice on the part of anyone,
15 including Dr. Green, but what makes this extraordinarily
16 complex is that ultimately there's a review by a panel,
17 and Dr. Connors is permitted to present evidence, and
18 the panel agrees to the nonrenewal. I find just no
19 evidence which would justify punitive damages.

20 Finally, in regard to compensatory damages, let me
21 just address why I ruled the way I did in permitting the
22 plaintiff to go forward with the additional witnesses --
23 additional witness today.

24 I appreciate that if the plaintiff had been unable
25 to introduce evidence about compensatory damages, that

1 the case would be over. A claim without damages doesn't
2 go to a jury. So I afforded the plaintiff just an
3 opportunity to present compensatory damages, and they
4 come in two forms.

5 The first is the moonlighting, and the second is
6 extrapolating what she may have earned for the two years
7 after nonrenewal prior to her larger income as a
8 psychiatrist.

9 I, frankly, had anticipated that the evidence would
10 be different; may have been some focus on the year after
11 her leaving Fletcher -- leaving Dartmouth, but that was
12 not the evidence presented at all. So we're left with
13 those damages which relate to moonlighting and
14 essentially speculation as to what she would have earned
15 after finishing Dartmouth and having two years of
16 additional employment.

17 Now, that latter issue I raised with the expert and
18 found that he couldn't testify to that because it's
19 overly speculative, and this was merely an effort on the
20 part of Dr. Connors to say, This is what I would have
21 earned had I not been nonrenewed. That is totally
22 speculative, in my view.

23 How even could one argue to a jury about the nature
24 of the damages here when you have no idea what her
25 placement would have been, no idea what her employment

1 would have been, and how it would have impacted her
2 income?

3 That is why I ruled the way I did in regard to the
4 expert, and it's essentially the same ruling in regard
5 to her ability to pinpoint what she would have earned.

6 Now, as to the moonlighting: She testifies that
7 she could have earned \$55,000 minus the \$5,000, so
8 \$50,000. Well, where does that figure come from? And
9 where does the income come from in moonlighting? How is
10 it pinpointed? And then how does it relate to the
11 complaint as well as the testimony?

12 Now she complains that she had made various
13 requests of various people for letters of
14 recommendation, but there's nothing established on the
15 record. There's no filings at all, and there's no
16 filings of complaints by her that other people haven't
17 written the letters. But more than that, there's a lot
18 of evidence here which suggests that she may not have
19 been a good candidate to moonlight.

20 This is a person who, by the plaintiff's theory,
21 suffers from a disability, and she needs additional time
22 for the taking of tests, et cetera. So is this the kind
23 of person who also would have moonlighted? Who knows.
24 And the point is that this is extraordinarily
25 speculative.

1 There's nothing concrete about jobs that she was
2 denied, opportunities that she was denied and, in
3 particular, specific demands and requests that she made
4 to fulfill her wish to moonlight. In my view, it is
5 entirely speculative, and as a result, there are no
6 compensatory damages proven. There are no damages
7 proven in this case. And that warrants granting of the
8 judgment.

9 I will also say that I am going to address the
10 discrimination retaliation claims as well as the implied
11 contract and good faith and fair dealing claims.

12 I would have anticipated testimony about the terms
13 of implied contract. You have the potential of an
14 additional contract for her PGY-4, but there's no
15 testimony about all the things that form the terms of an
16 implied contract, representations that were made by Dr.
17 Green or others, and reasonable reliance.

18 And what makes this particularly troublesome is
19 that the initial representations made by Dr. Green,
20 according to the plaintiff, were essentially that she
21 suffered from a learning disability and that she needed
22 additional time. And then one goes through the various
23 representations that she made to others and it becomes
24 very confusing as to whether she's in fact established
25 notice to the other side of the disability.

1 Eventually people learn and are aware of attention
2 deficit hyperactivity disorder, but in fact many of the
3 people with whom she was working at the V.A. never
4 knew -- including Dr. Lambert, never knew that she had
5 this form of disability. So where is the implied
6 contract here? And then, ultimately, where is the good
7 faith and fair dealing?

8 The good faith and fair dealing claim should be
9 dismissed, in my view, for a number of reasons:

10 Number one, the conduct essentially that the
11 plaintiff relies upon for the good faith and fair
12 dealing is the same conduct that constitutes their claim
13 of breach of implied contract. But more than that, I,
14 frankly, do not believe in assessing the evidence that
15 any jury could necessarily find there was sufficient
16 lack of good faith to warrant a judgment.

17 And, again, as to the discrimination and
18 retaliation claims, I am going to analyze them unto
19 their own merits. In my view, there is sufficient
20 evidence introduced by the plaintiff to establish those
21 claims. So the opinion will be drafted in such a way as
22 to first address the lack of proof in regard to damages,
23 and then second, I will address the Court's assessment
24 of each of the claims, finding that based upon the state
25 of the record there's -- no reasonable jury could render

1 a verdict in favor of the plaintiff.

2 I appreciate this is a unique circumstance. It is
3 a rare, rare thing indeed that the Court grants judgment
4 in the midst of trial, but I feel very strongly in
5 regard to the issues as I have described them, and so
6 the judgment motion raised by the defendants is granted,
7 and judgment is entered.

8 Is there anything else at this point? I will go in
9 and tell the jury that they're excused.

10 MR. KAPLAN: Nothing from the defense,
11 your Honor. Thank you.

12 THE COURT: Anything further?

13 MR. WATTS: Nothing at this point.

14 THE COURT: All right. Thank you.

15 MR. KAPLAN: Thank you, your Honor.

16 (Concluded at 11:38 a.m.)

17 *** ** ***

18

19

20 C E R T I F I C A T I O N

21 I certify that the foregoing is a correct
22 transcript from the record of proceedings in the
above-entitled matte

23

April 24, 2014

24

Date



Anne Nichols Pierce

25